I.W.G., Inc., d/b/a AAA Fire Sprinkler, Inc. and Con-Bru, Inc., d/b/a AAA Fire Sprinkler, Inc. and Robert B. Gordon, an Individual, and Arlene, Inc., d/b/a AAA Fire Suppression, Inc. *and* Road Sprinkler Fitters Local Union No. 669, U.A., AFL–CIO. Cases 27–CA–11771 and 27–CA-11870

August 27, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On May 9, 1995, Administrative Law Judge Clifford H. Anderson issued the attached decision. Respondent Robert B. Gordon (Gordon) filed exceptions and a supporting brief, the Charging Party and the General Counsel filed answering briefs, and Respondent Gordon filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings, findings,[2] and conclusions as modified below and to adopt the recommended Order as modified and set forth in full below.[3]

This case concerns numerous unfair labor practices allegedly committed in the context of a complex scheme of shifting corporate entities and questionable financial transactions. In a nutshell, the General Counsel alleges that Respondent Gordon abandoned and subsequently created corporations primarily to avoid paying his employees pursuant to an extant collective-bargaining agreement and to evade a statutory obligation to bargain with the Union over the terms and conditions of employment. The judge found, and we agree, that there is merit in the General Counsel's theory of the case. Although we adopt the judge's decision in substantial part, our reasoning differs from that of the judge with respect to the liability of two of the four Respondents. A brief recitation of the pertinent facts and allegations is in order.

I. STATEMENT OF THE CASE

A. *The Factual Setting*

Respondent I.W.G., Inc. (I.W.G.) was incorporated by Gordon and, in the late 1970s, began fire sprinkler contracting work under the trade name "AAA Fire Sprinkler, Inc." Gordon was the majority shareholder and chief executive officer of the Company and, as such, voluntarily recognized the Charging Party, Road Sprinkler Fitters Local Union No. 669, U.A., AFL–CIO (Local 669 or the Union), as the exclusive bargaining representative for a unit composed of sprinkler installers. I.W.G. entered into successive collective-bargaining agreements with the Union, the most recent of which was still in effect when Gordon discontinued I.W.G.'s business and laid off all his employees in the spring and early summer of 1991.[4]

At about the same time I.W.G. went out of business in 1991, Respondent Con-Bru, Inc. (Con-Bru) began doing business under the trade name "AAA Fire Sprinkler, Inc.," which it had purchased from I.W.G. for $100. Martin Christensen, a former sprinkler designer for I.W.G., was the sole owner of Con-Bru on paper and was its corporate president. Gordon's spouse was also secretary-treasurer of the new corporation. Con-Bru did not hire any former I.W.G. employees, but instead hired an entirely new complement of fire sprinkler installers who were not represented by any union. Con-Bru's existence was short lived, however, and after just a few months and relatively little work, it too went out of business.

The final corporate entity of significance in this case is Respondent Arlene, Inc. (Arlene), which began doing business as a fire sprinkler contractor in approximately July 1991 under the name "AAA Fire Suppression, Inc." Carl Welch, a longtime fire sprinkler expert and friend of Gordon's, was the sole paper owner of Arlene, and Welch and his wife served as corporate officers. Welch hired all of Con-Bru's nonunion sprinkler installers. But this business, too, was not to be. After about 1 year, Arlene ceased operations and all its employees were laid off. At the time of the hearing,

[1] The General Counsel has moved to strike two attachments to Respondent Gordon's exceptions because the documents were not made part of the record at the hearing and Respondent Gordon did not establish why the documents could not have been discovered previously and presented at the hearing. The General Counsel has further moved to strike Gordon's attempt to incorporate by reference his posthearing brief into his exceptions brief because, by doing so, the page limit for briefs would be exceeded. Respondent Gordon opposed the General Counsel's motion to strike those documents and references, and has moved for permission to exceed the page limit on briefs and for leave to adduce additional evidence. The General Counsel and the Charging Party opposed Respondent Gordon's motions. We hereby grant the General Counsel's motions to strike and deny Respondent Gordon's motions. Respondent Gordon's motion to exceed the page limit for briefs is denied as untimely. See Sec. 102.46(j) of the Board's Rules and Regulations. Respondent Gordon's motion for leave to adduce additional evidence is denied because the evidence is not newly discovered and previously unavailable. See *Owen Lee Floor Service*, 250 NLRB 651, 651 fn. 2 (1980).

[2] Respondent Gordon has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We shall modify the recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[4] The collective-bargaining agreement was effective by its terms from April 1, 1991, to March 31, 1994.

none of the three corporations was in operation nor did any of the three retain any assets.

B. *The Allegations in the Complaint*[5]

The substantive allegations of the complaint are based on the General Counsel's theory that when I.W.G. experienced financial difficulties in the late 1980s and early 1990s, Gordon attempted to reduce his labor costs by abandoning the unionized work force at I.W.G. and establishing a new nonunion fire sprinkler business, first in the form of Con-Bru and then Arlene. To that end, the complaint avers that I.W.G. violated Section 8(a)(3) when it laid off its employees in order to avoid paying them contract wages and that Con-Bru also violated Section 8(a)(3) when it failed and refused to hire I.W.G.'s employees because of their union activity. In addition, the General Counsel alleges that I.W.G. violated Section 8(a)(5) when it declined to respond to the Union's information requests regarding the financial and legal relationship between the dormant I.W.G. and the emergent Con-Bru. Finally, the General Counsel alleges that all three corporations violated Section 8(a)(5) when each failed to recognize and bargain with the Union.

Based on the connections between I.W.G. and Con-Bru, including Gordon's involvement with both entities, the General Counsel alleges that, for the purposes of the Act, the two corporations were acting as a single employer and that Con-Bru is the alter ego of I.W.G. The General Counsel also alleges that Arlene is a successor corporation to the I.W.G./Con-Bru entity within the meaning of *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973), and thus is liable for the unfair labor practices of its predecessor. Finally, the General Counsel avers that Respondent Gordon acted as a single employer with and alter ego of the I.W.G./Con-Bru entity, and thus is personally liable for the unfair labor practices it committed.

C. *The Judge's Decision*

The judge found I.W.G. violated Section 8(a)(3) by discharging its employees to avoid the obligations of the collective-bargaining agreement. The judge also found that Con-Bru violated Section 8(a)(3) by failing to hire those same employees because of their union affiliation. The judge similarly found that Arlene violated Section 8(a)(3) by failing to hire unit employees. The judge further found that I.W.G. violated Section 8(a)(5) when it refused to respond to the Union's requests for information regarding the various corporate relationships and identities. Finally, the judge found that each corporation violated Section 8(a)(5) when it refused to recognize and bargain with the Union, and that Con-Bru and Arlene further violated Section 8(a)(5) by making unilateral changes in terms and conditions of employment.

With respect to the liability issues, the judge concluded that I.W.G. and Con-Bru are jointly and severally liable for each other's 8(a)(3) and (5) violations because Con-Bru is a single employer with, and alter ego of, I.W.G. The judge held that Arlene is also jointly and severally liable because Arlene is a single employer with, alter ego of, and a *Golden State* successor to the I.W.G./Con-Bru entity. Finally, the judge pierced Con-Bru's corporate veil and held that Gordon is personally liable for that corporation's unfair labor practices. The judge also concluded that liability for I.W.G.'s violations flowed through Con-Bru, the pierced corporation, to Gordon because Con-Bru is a single employer with, and alter ego of, I.W.G.[6] Finally, based on the Union's posthearing argument, the judge held that Gordon is the alter ego of Arlene as well, and therefore held him personally liable for Arlene's violations. As a result, Gordon was held to be jointly and severally liable for the violations of all the other Respondents.

With respect to the unfair labor practice issues, we adopt the judge's findings, for the reasons set forth by him, that each corporate Respondent violated Section 8(a)(3) and (5) in the manner set forth in his decision.

With respect to the liability issues, we also adopt the judge's findings, for the reasons set forth by him, that Con-Bru is a single employer with, and alter ego of, I.W.G., and that Arlene is a *Golden State* successor to the I.W.G./Con-Bru entity. On the other two liability issues, however, we agree with the judge's result, but not with all of his rationale. Therefore, in the two sections that follow, we set forth our reasons for finding that Arlene is an alter ego of I.W.G./Con-Bru and that Gordon is personally liable for the unfair labor practices committed by the three corporate Respondents.

II. ARLENE IS AN ALTER EGO OF I.W.G./CON-BRU

A. *Respondent Gordon's Procedural Contention*

At the outset, we must address Respondent Gordon's contention that because the complaint does not allege Arlene to be an alter ego, it was error for the judge to so find. For the reasons set forth below, we find no merit in this assertion.

"It is well settled that the Board may find and remedy a violation even in the absence of a specific allegation in the complaint if the issue is closely connected to the subject matter of the complaint and has been fully litigated." *Pergament United Sales*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990). Applying the two-part *Pergament* test by analogy here, we find that it was proper for the judge to consider whether Arlene is an alter ego of I.W.G./Con-

[5] The complaint referred to in this decision is the amended consolidated complaint dated September 2, 1993.

[6] See JD at 89 fn. 16.

Bru, even though this issue was not the subject of a specific complaint allegation.

First, there can be no doubt that the Arlene alter-ego issue is closely connected to the subject matter of the complaint. Arlene was specifically named as a Respondent in this proceeding along with Gordon and the other two corporate Respondents. Most significantly, the gravamen of the General Counsel's complaint is that Gordon created and abandoned corporate entities in order to evade I.W.G.'s contractual and statutory obligations to its employees and the Union. Thus, the complaint alleges that I.W.G. was signatory to a collective-bargaining agreement with the Union, that Gordon personally decided to end I.W.G.'s existence in April 1991 because of the union activities of its employees, that Gordon personally decided to create Con-Bru as a disguised continuance of I.W.G., that in April 1991 Con-Bru purchased the business of I.W.G. and continued to operate it in basically unchanged form, that in July 1991 Con-Bru ceased operations, that also in July 1991 Arlene purchased the business of I.W.G./Con-Bru and continued to operate it in basically unchanged form, that Arlene, like I.W.G./Con-Bru, is obligated to recognize and bargain with the Union, and that Arlene is responsible for remedying the unfair labor practices of I.W.G./Con-Bru. Given these specific allegations, we find that the issue of whether Arlene, like Con-Bru, is a disguised continuance of I.W.G. is closely connected to the subject matter of the complaint.

Second, the record is clear that the alter ego issue was fully and fairly litigated at the hearing. The General Counsel offered considerable evidence detailing the operational similarities between Arlene and I.W.G./Con-Bru. The General Counsel also adduced evidence that Carl Welch, Arlene's sole shareholder, and Gordon entered into a secret partnership that provided Gordon with a concealed ownership interest in Arlene so that Gordon could continue in the fire sprinkler business while avoiding his labor law obligations.

In presenting his defense, Respondent Gordon proceeded in exactly the same way he would have been expected to proceed had the General Counsel specifically alleged Arlene's status as an alter ego.[7] He offered numerous witnesses and hundreds of pages of documents in an attempt to establish that Arlene engaged in arm's-length transactions with the two prior companies, and that any operational similarities were mere coincidence. Furthermore, Respondent Gordon challenged the secret partnership evidence at every turn. During his own direct testimony, he ardently denied the existence of the partnership, and through counsel, he thoroughly cross-examined Welch on the subject. He also offered witnesses to challenge the credibility of those testifying in support of the existence of the partnership. In a final effort to keep out evidence that appeared to demonstrate more than a mere successorship relationship, Respondent Gordon moved to strike as irrelevant all testimony and documents relating to the partnership, but the judge denied the motion.

In taking every opportunity to argue that Arlene was unrelated to I.W.G./Con-Bru and to challenge the existence of the Welch/Gordon partnership, Gordon effectively defended against the alter ego theory of liability. In our view of the record, he took every opportunity to present exculpatory evidence to defeat the alter ego theory as to Arlene. We can discern no practical difference between the defense Respondent Gordon actually presented and that which he might have presented had Arlene's alter ego status been specifically alleged in the complaint.

Accordingly, for all the above reasons, we find that the issue of whether Arlene was an alter ego of I.W.G./Con-Bru is properly before us for determination.

B. *Alter Ego Analysis*

In determining whether a business is an alter ego, or "disguised continuance," of another business, the Board examines whether the entities share "substantially identical management, business purpose, operation, equipment, customers, and supervision, as well as ownership." *Crawford Door Sales Co.*, 226 NLRB 1144, 1144 (1976) (citation and internal quotation marks omitted). The Board does not require the presence of each factor to conclude that alter ego status should be applied. See, e.g., *Fugazy Continental Corp.*, 265 NLRB 1301, 1301–1302 (1982), enfd. 725 F.2d 1416 (D.C. Cir. 1984). The Board also considers whether "the purpose behind the creation of the alleged alter ego was legitimate or whether, instead, its purpose was to evade responsibilities under the Act." *Watt Electric Co.*, 273 NLRB 655, 658 (1984).[8]

While not a singularly controlling factor in the alter ego analysis, Gordon's intent to evade his responsibilities under the Act could not be more clear. The judge

[7] While all Respondents filed answers to the complaint in some fashion, only Respondent Gordon, through counsel, entered an appearance and put on a defense.

[8] The Board does not require a finding of intent to evade labor obligations in order to make an alter ego determination. *Hiysota Fuel Co.*, 280 NLRB 763, 763 fn. 2 (1986), enfd. in unpublished decision (3d Cir. Oct. 30, 1986). "Rather, the presence or absence of unlawful motivation is merely one factor that the Board considers in weighing the circumstances of any particular case." Id. While the courts of appeals are split on the necessity of showing an illegal intent in alter ego cases, see, e.g., *Stardyne, Inc. v. NLRB*, 41 F.3d 141, 146–147 and fn. 4 (3d Cir. 1994) (compiling cases demonstrating variety of approaches among the courts), the Court of Appeals for the Tenth Circuit has held such a showing to be "germane." *NLRB v. Tricor Products*, 636 F.2d 266, 270 (10th Cir. 1980). (The alleged unfair labor practices herein occurred in Denver, Colorado, within the jurisdiction of the Tenth Circuit.)

credited the testimony of a parade of witnesses, each of whom confirmed that Gordon's purpose in creating Con-Bru and then Arlene was to reduce his labor costs by skirting his collective-bargaining agreement with the Union. And in abandoning and creating corporations for this purpose, Gordon fraudulently concealed his relationships with those corporations from the Union and the Board. Indeed, as the judge found, Gordon created Con-Bru in the "attempt[] to achieve his expressed goal of 'going nonunion' by laying off IWG's unit employees . . . and transferring the remaining work . . . to Con-Bru"[9] and then created Arlene in a "continuing scheme to avoid IWG's contractual and statutory obligations to the Union and its employees."[10]

The other factors in the alter ego analysis are plainly present with respect to Arlene's relationship to I.W.G./Con-Bru, as set forth below.

1. Ownership

As the judge indicated, at the core of the evidentiary dispute in this case is the highly contradictory testimony of Carl Welch, Arlene's sole shareholder, and Respondent Gordon, whom Welch contends kept his ownership and control of Arlene secret in order to avoid his labor law responsibilities. According to Welch, he and Gordon entered into a conspiracy to evade I.W.G./Con-Bru's statutory obligations to adhere to I.W.G.'s collective-bargaining agreement and to bargain in good faith with the Union. To that end, Welch and Gordon each invested $50,000 in the startup of a new fire sprinkler corporation, Arlene.

To conceal Gordon's involvement in Arlene, Welch held 100 percent of the stock. To secure Gordon's interest in the business, Welch executed in favor of Gordon a promissory note and an option agreement to purchase Arlene's stock. In order to hide Gordon's interest in Arlene, Welch admitted to engaging in a variety of wrongful acts, including filing false affidavits with the Board, filing false corporate and personal income tax statements, maintaining fraudulent accounting books, and manipulating numerous financial transactions to obscure the flow of capital between the three corporations. The judge credited in full Welch's depiction of events, including that he and Gordon were equal partners in Arlene, and entirely discredited Respondent Gordon's assertion that he was unconnected to Arlene.

In sum, the judge found that "Arlene was equally owned by and controlled in fact by Gordon." In addition, by his own admission, Gordon owned 98.5 percent of the shares of I.W.G. Although, on paper, Con-Bru was owned solely by Martin Christensen, based on both the judge's analysis regarding the single-employer status of I.W.G./Con-Bru and his decision to pierce Con-Bru's corporate veil, it is apparent that Gordon controlled Con-Bru as well.[11] It is well established that such control is a substitute for ownership. *Hydro Logistics*, 287 NLRB 602 (1987), enfd. sub nom. *NLRB v. Wizard Method*, 897 F.2d 1233 (2d Cir. 1990). Accordingly, we find that Arlene, I.W.G., and Con-Bru shared "substantially identical" ownership for purposes of determining alter ego status.

2. Management and supervision

As majority shareholder, corporate president, and chief executive officer, Gordon was directly and indisputably involved in the management of I.W.G. In addition, the judge credited Welch's testimony that Gordon was the "unofficial CEO" of Con-Bru, and was directly responsible for supervising, hiring, and firing its field staff.

Similarly, despite trying to conceal his involvement with the new corporation, Gordon had an active management role in Arlene. To that end, Gordon signed an employment contract with Arlene, which established his job title as "purchasing agent" and his annual compensation at $48,000, although Welch testified that Gordon's real function was to run Arlene's construction department. According to Welch, Gordon was present at the office every day and was actively involved in all the major management decisions. At a Friday breakfast meeting 3 days before Arlene began operations, Gordon told Con-Bru employees that, as of the following Monday, they would be doing the same work for a company called Arlene, and that Gordon would be assuming field superintendent duties for that company. So as not to emphasize his involvement in Arlene, however, Gordon did not directly supervise the sprinkler installers but instead advised Welch on employment issues related to them.

Given this set of circumstances, the record evidence in this case leads to the inescapable conclusion that the three corporations had substantially identical management and supervision.

[9] See JD at 86.

[10] See JD at 88.

[11] In his single-employer analysis, the judge found that although Martin Christensen claimed to be the sole owner of Con-Bru, the only capital infusion that Con-Bru received for its startup or during its brief life was from Gordon. As the judge concluded, this infusion was plainly not an arm's-length transaction. Gordon purchased from Christensen the latter's trivial (1.5 percent) shareholding in I.W.G., which had suspended operations at the time of the purchase, at a clearly inflated price. In exchange for his capital investment, Gordon controlled the operations of Con-Bru. See JD at 87. Indeed, the judge found that Con-Bru's legal distinction was a sham, and that Gordon was the "power behind the throne" at Con-Bru. Id., JD at 86. We agree with these findings, and they lead us to conclude, as did the judge, that Gordon was the real party in interest behind Con-Bru.

3. Business purpose, equipment, and operations

The record also demonstrates that the business purpose, equipment, and operations of I.W.G./Con-Bru and Arlene were substantially identical, and the judge made a number of findings in this regard. First, Arlene, which started doing business at virtually the same time Con-Bru ceased operations, had the same business purpose as its predecessors—the sale, design, installation, and service of fire sprinkler systems, primarily for commercial customers. In addition, Arlene purchased its materials, tools, equipment, vehicles, and inventory from I.W.G., which had previously leased the same equipment to Con-Bru. Arlene also operated out of the same office as that used by both I.W.G. and Con-Bru, and sublet back a portion of the space to I.W.G. Arlene's assumed trade name, "AAA Fire Suppression," was conspicuously similar to the I.W.G./Con-Bru trade name, "AAA Fire Sprinkler." Finally, Arlene hired all of Con-Bru's employees, who performed the same work for Arlene as they had for Con-Bru, using the identical material and equipment. In effect, the transition between Con-Bru and Arlene was virtually seamless, and the interrelatedness of the three corporations' operations is well established for the purposes of the alter ego analysis.

4. Conclusion

We have found that Arlene and I.W.G./Con-Bru share substantially identical ownership, management, supervision, business purpose, equipment, and operations. We have also found substantial evidence of unlawful motivation. Based on these findings, we conclude that the General Counsel has proved that Arlene is an alter ego of I.W.G./Con-Bru. Because we find that both Con-Bru and Arlene are alter egos of I.W.G., the three corporations are jointly and severally liable for the unfair labor practices committed by the others as found by the judge. *P. A. Hayes, Inc.*, 226 NLRB 230, 236 (1976).

III. ROBERT GORDON'S PERSONAL LIABILITY FOR THE CORPORATIONS' UNFAIR LABOR PRACTICES

The judge found that Gordon was personally liable for the unfair labor practices committed by all three corporations. In reaching this conclusion, he pierced the corporate veil of Con-Bru and, because Con-Bru was a single employer with and alter ego of I.W.G., he effectively pierced I.W.G.'s corporate veil as well. He further held that Gordon was personally liable for the unfair labor practices of Arlene because Gordon was an alter ego of Arlene. We adopt the judge's conclusion that Gordon is personally liable for the violations of the Act committed by all three corporations, but we base our conclusions on a rationale different from that provided by the judge.

In imposing personal liability on Gordon for the unfair labor practices of Arlene, the judge concluded that Gordon is the alter ego of Arlene and, as such, Gordon should be jointly and severally liable for the remedial obligations of Arlene. Contrary to the judge, we do not rely on the alter ego analysis to impose personal liability on Gordon. In our view, the issue of personal liability as to individuals shielded by the corporate form should be determined by employing the veil-piercing analysis set forth, infra.

In undertaking his analysis of Gordon's personal liability in this matter, the judge was without benefit of our recent decision in *White Oak Coal*, 318 NLRB 732 (1995). In that case, we rejected as "unclear and unwieldy" the "multifaceted" approach to piercing the corporate veil set out in *Riley Aeronautics Corp.*, 178 NLRB 495 (1969), on which the judge relied in his analysis here. JD at 88–89. In place of *Riley*, we adopted a two-part analytical framework for determining whether to impose personal liability on shareholders for the unfair labor practices committed by corporations, and our test is largely based on *NLRB v. Greater Kansas City Roofing*, 2 F.3d 1047 (10th Cir. 1993). Under *White Oak Coal*,

> the corporate veil may be pierced when: (1) there is such unity of interest, and lack of respect given to the separate identity of the corporation by its shareholders, that the personalities and assets of the corporation and the individuals are indistinct, *and* (2) adherence to the corporate form would sanction a fraud, promote injustice, or lead to an evasion of legal obligations.

318 NLRB at 735.

Most significant in determining whether the personalities and assets of a corporation and its shareholders have become indistinct are the degree to which corporate formalities have been maintained and the extent to which individual and corporate funds, assets, and affairs have been commingled. Among the specific factors considered in the analysis are:

> (1) whether the corporation is operated as a separate entity; (2) the commingling of funds and other assets; (3) the failure to maintain adequate corporate records; (4) the nature of the corporation's ownership and control; (5) the availability and use of corporate assets, the absence of same, or undercapitalization; (6) the use of the corporate form as a mere shell, instrumentality or conduit of an individual or another corporation; (7) disregard of corporate legal formalities and the failure to maintain an arm's-length relationship among related entities; (8) diversion of the corporate funds or assets to noncorporate purposes; and, in addition, (9) transfer or disposal of corporate assets without fair consideration.

Id. (fns. omitted). Finally, the Board has indicated that the second prong of the test must have some causal relationship to the first prong of the test. In other words, the fraud, injustice, or evasion of legal obligations must flow from the misuse of the corporate form. Id.

This is a classic case involving the misuse of the corporate form in order to create a shield against legal liability, and a number of the *White Oak Coal* factors are met here. The overarching evidence of corporate misuse is, of course, the credited testimony that Gordon's primary objective in creating both Con-Bru and Arlene was to establish his hidden ownership in a nonunion fire sprinkler installation business. Under the *White Oak Coal* rubric, therefore, he used both Con-Bru and Arlene as a "shell, instrumentality or conduit" of I.W.G. so that he could continue in the fire sprinkler business without the burden of the union contract.

The credited testimony of several witnesses also demonstrates that in inter-corporate financial transactions, Gordon failed to maintain arm's-length relationships between the three corporations. The most striking example of this involves Gordon's initial $50,000 investment in Arlene, which evinces his inclination to use the assets of each corporation as his personal funds to transfer at will. In order to create Arlene, Gordon stripped the dwindling assets of I.W.G./Con-Bru and shifted them into the new business without any regard for documenting the indebtedness of one corporation to another. The credited testimony further indicates that Gordon used Arlene's assets to pay arrearages of I.W.G., again without attending to any corporate loan formalities. Furthermore, the judge aptly drew the conclusion that Con-Bru's initial start-up fund of a mere $10,000, which was the result of Gordon's less-than-arm's-length purchase of I.W.G. stock from Christensen, was evidence of Con-Bru's severe undercapitalization, an additional factor to be considered under *White Oak Coal*, supra.

In addition to the deceptive financial transactions between and among the three corporations, Gordon used the corporations to support his personal business as well. The credited testimony reveals that the office manager of each corporation was also responsible for conducting Gordon's substantial rental property business. To that end, the office manager would log incoming rent checks, prod tenants who were behind in rent payments, field calls from tenants desiring building maintenance and arrange for those maintenance visits to occur, and arrange for the eviction of nonpaying tenants. I.W.G.'s office manager, who transferred to Con-Bru when the latter corporation began operations, testified that these duties, which clearly bore no relationship to the fire sprinkler business, occupied up to half her working time. Similarly, several witnesses testified that at its inception Arlene had no clients, so Arlene's sprinkler installers spent their early days at Gordon's home painting the house and doing yard work. Finally, both testimonial and documentary evidence confirm that Gordon had Arlene pay for a number of personal expenditures posted to his American Express and other credit card accounts. The record fully substantiates the conclusion that Gordon misused the three corporations to such an extent that the "personalities and assets of the corporation[s] and the individual[] are indistinct," thus satisfying the first part of the *White Oak Coal* analysis. Id. at 735.

We further find that under the second prong of the *White Oak Coal* test, "adherence to the corporate form would sanction a fraud, promote injustice, or lead to evasion of legal obligations[]" in this case. We reach this conclusion for two reasons. First, and most significantly, the fundamental purpose of Gordon's misuse of the corporations in this case was to promote his fraudulent scheme to conceal his ownership and control of each corporation and thereby evade his labor law obligations. Absent the imposition of shareholder liability under these circumstances, Gordon's fraudulent conduct would, in effect, be sanctioned. Second, Gordon exploited the resources of each corporation for his own personal benefit, thereby depleting the assets of the corporations that could otherwise be used to satisfy outstanding legal obligations. As we indicated in *White Oak Coal*, supra, piercing the corporate veil is justified when "use of corporate assets for personal gain" results in "the diminished ability of the corporate alter egos to satisfy [their] statutory remedial obligations." Id. The judge has indicated that at the time of the hearing, each of the three corporations was without any assets. Under these circumstances, absent imposing shareholder liability, the fraudulent scheme undertaken by Gordon to evade his legal obligations will go unremedied.

We have determined that the facts of this case meet the standards for imposing shareholder liability as enunciated in *White Oak Coal*, supra. Accordingly, we pierce the corporate veils of I.W.G., Con-Bru, and Arlene, and hold Respondent Gordon personally liable for the remedial obligations of each corporation as found in these proceedings.

CONCLUSIONS OF LAW

1. Respondents I.W.G., Con-Bru, and Arlene were, at all relevant times, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act and, at all relevant times, has been the exclusive collective-bargaining representative of Respondents' employees in the following unit:

All journeyman sprinkler fitters and apprentices employed by Respondents, but excluding office clerical employees, and all guards and supervisors as defined in the Act.

3. The collective-bargaining unit set out above was at all times appropriate for purposes of collective bargaining within the meaning of Section 9 of the Act.

4. Respondent Con-Bru is a single employer with, and alter ego of, Respondent I.W.G.

5. Respondent Arlene is a *Golden State* successor to, and alter ego of, Respondents I.W.G. and Con-Bru.

6. All Respondents are participants in a common enterprise designed to evade the corporate Respondents' ongoing obligations to recognize and bargain with the Union, to honor and apply the collective-bargaining agreement, and to abide by their obligations under the Act.

7. All corporate Respondents are jointly and severally liable for the unfair labor practices found in this proceeding. Respondent Gordon is personally liable for the unfair labor practices committed by the corporate Respondents as found in these proceedings.

8. Respondents I.W.G., Con-Bru, and Arlene violated Section 8(a)(3) and (1) of the Act by discharging and failing to reinstate I.W.G. unit employees because they were represented by the Union and their work was governed by a collective-bargaining agreement.

9. Respondents I.W.G., Con-Bru, and Arlene violated Section 8(a)(5) and (1) of the Act by:

a. Failing and refusing to recognize, meet, and/or bargain with the Union as the exclusive representative of employees in the unit described above.

b. Unilaterally altering the terms and conditions of employment of their employees as established by the I.W.G. collective-bargaining agreement.

c. Failing and refusing to timely or completely respond to the Union's request for relevant information respecting the relationship between I.W.G. and Con-Bru.

10. The above unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have violated Section 8(a)(3) and (5), and are jointly and severally liable to remedy these violations, they will be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondents I.W.G., Con-Bru, and Arlene

In the event that any Respondent resumes operations, it will be required to offer I.W.G. unit employees[12] immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to restore the terms and conditions of employment to the status quo ante as it existed pursuant to the I.W.G. collective-bargaining agreement. The Respondents shall also make these employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondents shall also be required to remove from their records any and all references to any adverse employment action taken against their employees as the result of the union affiliation of those employees and to notify each of them in writing that this has been done and that the unlawful action will not be used against them in any way.

In addition, the Respondents shall be directed to make whole, pursuant to the wage rates and benefits contained in the I.W.G. collective-bargaining agreement,[13] all former I.W.G., Con-Bru, and Arlene employees for any loss of earnings and benefits they may have suffered as a result of the Respondents' 8(a)(5) violations. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra. In addition, the Respondents shall make all delinquent contributions to employee benefit funds, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). The Respondents shall also reimburse unit employees for any expenses ensuing from their failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.[14]

The Respondents shall be required to give each of their employees written notice that it will recognize and, on request, bargain with the Union as the exclusive representative of their employees. In addition, the

[12] We agree with the judge that the supervisory status of certain employees should be left to the compliance stage of this proceeding.

[13] We conclude that Arlene is liable for a contract-based, make-whole remedy based on our determination that the corporation is an alter ego of the I.W.G./Con-Bru entity. *NLRB v. Tricor Products*, 636 F.2d 266, 269–270 (10th Cir. 1980)

[14] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the respondent otherwise owes the fund.

Respondents shall be ordered to cease and desist from making unilateral changes to the terms and conditions of employment of unit employees. The Respondents shall also be directed to respond to the Union's information requests should the Union choose to renew those requests.

In view of the widespread and egregious nature of the Respondents' violations of the Act, we shall include a broad cease-and-desist order pursuant to *Hickmott Foods*, 242 NLRB 1357 (1979).[15]

Respondent Robert B. Gordon

Respondent Gordon shall be jointly and severally liable for the unfair labor practices of the corporate Respondents and the remedies they are directed to undertake.

ORDER

The National Labor Relations Board orders that the Respondents, I.W.G., Inc., d/b/a AAA Fire Sprinkler, Inc., Con-Bru, Inc., d/b/a AAA Fire Sprinkler, Inc., and Arlene, Inc., d/b/a AAA Fire Suppression, Inc., Denver, Colorado, their officers, agents, successors, and assigns, and Respondent Robert B. Gordon, an individual, his agents, successors, and assigns, shall, jointly and severally

1. Cease and desist from

(a) Discharging, failing to reinstate, or otherwise discriminating against any employee in order to avoid their obligation to apply the terms of the collective-bargaining agreement to unit employees and to recognize and bargain with the Union as the exclusive representative of those employees.

(b) Failing and refusing to recognize, meet, and/or bargain with the Union as the exclusive representative of unit employees.

(c) Unilaterally altering the terms and conditions of employment of their employees as established by the I.W.G. collective-bargaining agreement.

(d) Failing and refusing to respond in a complete and timely fashion to requests for information respecting matters relevant to unit employees.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) In the event that any Respondent resumes operations, offer in writing, immediate and full reinstatement to all I.W.G. unit employees to the positions they previously held or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. With the written reinstatement offers, the Respondents shall notify these individuals in writing that they will recognize and bargain with the Union as their exclusive representative. On resumption of operations, the Respondents shall restore the terms and conditions of employment to the status quo ante as it existed under the I.W.G. collective-bargaining agreement.

(b) Make whole all former I.W.G., Con-Bru, and Arlene employees for any loss of earnings and other benefits suffered as a result of the unfair labor practices committed herein, in the manner set forth in the remedy section of this Decision.

(c) Make all delinquent payments to employee benefit funds, and reimburse employees for any expenses resulting from the failure to make the required payments, in the manner set forth in the remedy section of this Decision.

(d) Within 14 days from the date of this Order, remove from their files any reference to the unlawful discrimination, and within 3 days thereafter notify the employees in writing that this has been done and that the discriminatory conduct will not be used against them in any way.

(e) On request, recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate unit:

> All journeyman sprinkler fitters and apprentices employed by Respondents, but excluding office clerical employees, and all guards and supervisors as defined in the Act.

(f) On request of the Union, respond in a timely and complete fashion to the Union's requests for information contained in the letters to the Respondent dated May 7, June 7, and July 2 and 11, 1991.

(g) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay and other moneys due under the terms of this Order and to ensure full compliance with this Order.

(h) Mail copies of the attached notice marked "Appendix"[16] to the Union and the last known address of all former I.W.G., Con-Bru, and Arlene employees. Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondents' authorized representatives, shall be mailed immediately on receipt by the Respondents. Further, if any Respondent resumes operations, copies

[15] Because no corporate Respondent is currently in operation, we shall require the Respondents to mail copies of any required notice to the last known addresses of the relevant employees.

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. The notices shall be in English and such other languages as the Regional Director determines are necessary to fully communicate with employees. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondents have taken to comply.

MEMBER COHEN, concurring in part and dissenting in part.

I conclude that there is a procedural impediment to a conclusion that Arlene is a single employer or alter ego of its predecessors. The General Counsel's complaint drew a distinction between (1) I.W.G. and Con-Bru and (2) Arlene. The complaint alleged that I.W.G. and Con-Bru were a single employer or alter egos. By contrast, the complaint alleged that Arlene was only a *Golden State*[1] successor. Concededly, there are some elements that are common to both concepts, and, in this sense, some "single employer—alter ego" matters were litigated. But this is no substitute for clear notice to Respondent Arlene, through the original complaint or by amendment, that it is being charged with single-employer or alter ego status. The burden on the General Counsel (to allege in the complaint or to amend on the record) is slight. And, the danger is substantial if there is no complaint allegation or amendment. That danger is that a party will be adjudged guilty of conduct with which it was never clearly charged. The balance favors clear notice, and I would require it.[2]

In support of their contrary view, my colleagues rely on *Pergament United Sales*, 296 NLRB 333 (1989), enfd. 920, F.2d 130 (2d Cir. 1990). That case is clearly distinguishable. In *Pergament*, supra, the complaint alleged that a refusal to hire was unlawful under Section 8(a)(3). The complaint contained no 8(a)(4) allegation. The Board nonetheless found that the refusal to hire violated Section 8(a)(3) and (4). The Board noted particularly that the employer's own witness admitted the facts establishing the 8(a)(4) violation. By contrast, in the instant case, the complaint *does* contain alter ego—single-employer allegations. However, those allegations are confined to I.W.G. and Con-Bru. Arlene is alleged only as a successor. The reasonable reading of the complaint is that Arlene was not alleged to be an alter ego or single employer with the others. In addition, there was no "admission" by Arlene that it was an alter ego or single employer. In short, *Pergament*, supra, is a wholly different case.

There is also no allegation that Arlene violated Section 8(a)(3) by not hiring the unit employees of I.W.G. However, the judge found the violation, and there are no exceptions thereto. Accordingly, I would adopt it pro forma.

Further, given the 8(a)(3) violation by Arlene, it is clear that, but for this violation, the I.W.G. unit employees would have been a majority of Arlene's work force. In view of this, and in view of the other elements of successorship, I agree that Arlene had an obligation to bargain with the Union.

In addition, I concur that Arlene had a *Golden State* obligation to remedy the unlawful conduct of its predecessor, I.W.G./Con-Bru. This unlawful conduct included discharging the "I.W.G." employees, and unilaterally changing the terms and conditions of the Con-Bru employees. Thus, Arlene is obligated to reinstate the I.W.G. employees and make them whole, and Arlene must make whole the Con-Bru employees for the unlawful change to which they were subjected by the predecessor.

Finally, I do not adopt the conclusion that Gordon is individually liable. That conclusion has two flaws. First, it is based in part on the conclusion that Arlene is a single employer/alter ego of I.W.G. and Con-Bru. As noted above, I do not adopt that conclusion. Second, the judge did not have the opportunity to analyze the contention pursuant to the Board's recent decision in *White Oak Coal*, 318 NLRB 732 (1995). Thus, I would remand this issue to the judge for him to analyze it under *White Oak Coal* and without reference to Arlene.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to mail this notice to each of our former employees and, if we ever resume operations, post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice

[1] *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973).

[2] See *Teamster Local 101 (Allied Signal)*, 308 NLRB 140, 148 (1992).

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge, fail to reinstate, or otherwise discriminate against any employee in order to avoid our obligation to apply the terms of the collective-bargaining agreement to unit employees and to recognize and bargain with the Union as the exclusive representative of those employees.

WE WILL NOT fail and refuse to recognize, meet, and/or bargain with the Union as the exclusive representative of our unit employees.

WE WILL NOT unilaterally alter the terms and conditions of employment of our employees as established by the I.W.G. collective-bargaining agreement.

WE WILL NOT fail and refuse to respond in a complete and timely fashion to requests for information respecting matters relevant to unit employees.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of rights guaranteed you in Section 7 of the Act.

WE WILL, in the event that any one of us resumes operations, offer in writing, immediate and full reinstatement to all I.W.G. unit employees to the positions they previously held or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. With the written reinstatement offers, WE WILL notify these individuals in writing that we will recognize and bargain with the Union as their exclusive representative. On resumption of operations, WE WILL restore the terms and conditions of employment to the status quo ante as it existed in the I.W.G. collective-bargaining agreement.

WE WILL make whole all former I.W.G., Con-Bru, and Arlene employees for any loss of earnings and other benefits suffered as a result of the unfair labor practices committed.

WE WILL make all delinquent payments to employee benefit funds, including any additional amounts due the funds, and WE WILL reimburse employees for any expenses resulting from our failure to make the required payments.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discrimination, and within 3 days thereafter notify the employees in writing that this has been done and that the discriminatory conduct will not be used against them in any way.

WE WILL, on request, recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate unit:

All journeyman sprinkler fitters and apprentices employed by us, but excluding office clerical employees, and all guards and supervisors as defined in the Act.

WE WILL, on request of the Union, respond in a timely and complete fashion to the requests for information contained in the Union's letters to the Respondents dated May 7, June 7, and July 2 and 11, 1991.

I.W.G., INC., D/B/A AAA FIRE SPRINKLER, INC.

CON-BRU, INC., D/B/A AAA FIRE SPRINKLER, INC.

ARLENE, INC., D/B/A AAA FIRE SUPPRESSION, INC.

ROBERT B. GORDON

Michael Pennington, Esq., for the General Counsel.
James W. Bain and *Peter A. Gergely, Esqs. (Brega & Winters)*, of Denver, Colorado, for Respondent Gordon.
Carl Welch, President, of Denver, Colorado, for Respondent Arlene.
Richard W. Gibson and *William W. Osborne, Esqs. (Beins, Axelrod, Osborne and Mooney)*, of Washington, D.C., for the Charging Party.

DECISION

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard the above captioned cases in trial on various days commencing on June 7, 1994, and concluding on January 13, 1995, in Denver, Colorado. Posthearing briefs were due on March 20, 1995. The matter arose as follows.

On June 20, 1991, Road Sprinklers Fitters Local Union No. 669, U.A., AFL–CIO (the Union or the Charging Party) filed a charge docketed as Case 27–CA–11771 against I.W.G., Inc., d/b/a AAA Fire Sprinkler, Inc. (Respondent IWG or IWG) and Con-Bru, Inc., d/b/a AAA Fire Sprinkler, Inc. (Respondent Con-Bru or Con-Bru). The Regional Director for Region 27 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing respecting the case as to Respondent IWG on August 7, 1991. The charge was amended on August 8, 1991. On September 4, 1991, the Charging Party filed a charge docketed as Case 27–CA–11870 against Respondent IWG and Respondent Con-Bru. The Charging Party amended its charge in Case 27–CA–11870 on September 18, 1991, expanding the allegations by adding new Respondents: Robert W. Gordon (Respondent Gordon), an individual, and Arlene, Inc., d/b/a AAA Fire Suppression, Inc. (Respondent Arlene or Arlene). The Charging Party further amended its charge in Case 27–CA–11870 on January 30, 1992. The Regional Director postponed the then-scheduled hearing in Case 27–CA–11771 on October 9, 1991.

On January 31, 1992, the Regional Director issued an order consolidating cases, consolidated complaint, and notice of hearing respecting Cases 27–CA–11771 and 27–CA–11870 and the four Respondents named above. On September 1, 1992, the Charging Party amended its charge in Case

27–CA–11870 by adding a fifth Respondent, Connie L. Gordon, an individual. Gordon, the Respondents, and the Charging Party entered into an informal settlement agreement approved by the Regional Director on September 30, 1992. On September 2, 1993, the Regional Director issued an Order Revoking Settlement Agreement and Amended Consolidated Complaint and Notice of Hearing essentially reissuing the former consolidated complaint as to the Respondents and adding Connie Gordon as an additional Respondent. Thereafter at the trial, the General Counsel amended the complaint by withdrawing the allegations against Connie Gordon as a Respondent.

The amended consolidated complaint, as further amended at the trial, alleges, inter alia, that Respondent IWG in April 1991 abandoned its business as a sprinkler fitter contractor and terminated its sprinkler fitter employees because of their union activities in violation of Section 8(a)(3) and (1) of the National Labor Relations Act (the Act). The complaint further alleges that Respondent IWG had a long time collective-bargaining relationship with the Union and had recognized it as the representative of its sprinkler fitter employees (the unit). On and after May 1991, the complaint alleges, Respondent IWG has failed and refused to bargain with the Union respecting unit employees or to furnish it with requested information relevant and necessary to the Union's representation of unit employees in violation of Section 8(a)(5) and (1) of the Act.

The complaint further alleges that Respondent Con-Bru was a subordinate instrument to, a disguised continuation of, and an alter ego and single employer with Respondent IWG. The complaint alleges that Con-Bru refused to hire IWG's discharged sprinkler fitter employees because of their union representation and activities in violation of Section 8(a)(3) and (1) of the Act. The complaint further alleges that, since IWG's employees were represented by the Union in an appropriate bargaining unit, and that, but for the improper refusal of Respondent Con-Bru to hire the former employees of Respondent IWG, Respondent Con-Bru would have employed a majority of Respondent IWG's union represented employees in its sprinkler fitter unit, and is therefore a successor to IWG. The complaint also alleges that Respondent Con-Bru is consequentially obligated to recognize and bargain with the Union as representative of its employees. The complaint alleges that on and after April 1991 Respondent Con-Bru failed and refused to recognize the Union as the exclusive representative of its unit employees in violation of Section 8(a)(5) and (1) of the Act.

Respondent Arlene, in turn, is alleged in the complaint to be a purchaser of the business of Respondents IWG and Con-Bru and a successor to them who continued the business with knowledge of Respondent IWG and Con-Bru's potential liability for unfair labor practices. The complaint alleges Respondent Arlene thus assumed the obligation to recognize and bargain with the Union as the exclusive representative of its unit employees. The complaint further alleges that the Union, since on or about December 9, 1991, has been requesting Respondent Arlene recognize and bargain with it as the exclusive representative of unit employees and that Respondent Arlene has at all times failed and refused to do so in violation of Section 8(a)(5) and (1) of the Act.

Respondent Gordon is alleged to be the owner of Respondent IWG who exerted personal control over its activities and determined to commit the unfair labor practices described above. The complaint further alleges that Respondent Gordon is an alter ego of Respondents IWG and Con-Bru and is personally liable for remedying the unfair labor practices of IWG and Con-Bru.

On the entire record herein, including helpful briefs from the General Counsel, the Charging Party, and Respondent, I make the following

FINDINGS OF FACT[1]

I. JURISDICTION

Respondent IWG, during the 12-month period proceeding the filing of the initial charge herein, was a Colorado state corporation, with an office in Denver, Colorado, operating as a contractor engaged in the installation and sale of fire sprinkler equipment in various States of the United States. During that period Respondent IWG purchased and received within the State of Colorado pipe and other products from a Colorado state business, Grif-fab, which in turn obtained the material from outside the State of Colorado, of a value exceeding $50,000. During the same period Respondent IWG received from outside the State of Colorado payments for services performed outside the State in an amount in excess of $50,000.

Based on the above facts, I find that at all times material, Respondent IWG was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent Con-Bru was in operation for only a fraction of a calander year. Annualizing its purchases and sales revenues, Respondent Con-Bru purchased and received within the State of Colorado pipe and other products from a Colorado state business, Grif-fab, who in turn obtained the material from outside the State of Colorado, of a value exceeding $50,000. On the same basis, Respondent Con-Bru received for services performed in excess of $50,000 from Price Club, a corporation which meets the Board's jurisdictional standards based on both direct sales and purchases.

Based on the above facts, I find that at all times material, Respondent Con-Bru was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent Arlene, during the 12-month period proceeding the filing the initial charge against it herein, was a Colorado state corporation, with an office in Denver, Colorado, operating as a contractor engaged in the installation and sale of fire sprinkler equipment in various States of the United States. During that period Respondent Arlene purchased and received within the State of Colorado pipe and other products from a Colorado state business, Grif-fab, who in turn obtained the material from outside the State of Colorado of a

[1] Where not otherwise noted, the findings herein are based on the admitted pleadings, the stipulations, or admissions of counsel and/or principals of parties litigant and uncontested, credible testimonial or documentary evidence.

I find the charges and amended charges herein were timely served on all Respondents. In making this finding, I have relied upon the charges, amended charges, affidavits of service, and United States Postal Service return receipts received into evidence. I have also relied on the Board's Rules and Regulations Sec. 102.114 respecting proof of service, Sec. 102.20 respecting the effect of not filing an answer, and the testimony of Martin Christensen respecting receipt of charges against Respondent Con-Bru.

value exceeding $50,000. During the same period Respondent Arlene received from outside the State of Colorado payments for services performed in excess of $50,000.

Based on the above facts, I find that at all times material, Respondent Arlene was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Based on uncontested record testimony, I find the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

1. A brief overview of the entities and individuals involved

a. *Robert Gordon and the operation of IWG*

A self-made man, Robert Bruce Gordon started IWG as an equipment leasing operation over 20 years ago. IWG became a fire sprinkler contractor in or about 1977. In 1980 IWG affiliated with Fabco, Inc., which fabricated sprinkler materials. The two entities merged in 1985. IWG at all times material has done business under the trade name AAA Fire Sprinkler, Inc. IWG had initial success as a commercial contractor installing fire sprinkler equipment in Colorado and various States of the United States. By 1983 and 1984, IWG was a multimillion dollar a year enterprise and Gordon was a well known individual in the fire protection industry holding responsible positions with fire protection industry trade and professional associations.

At all times since perhaps 1981, Gordon has been the majority shareholder in IWG. At all times material Gordon was IWG's corporate president and chief executive officer and owned 98.5 percent of the corporate shares.[2] Gordon's then-wife, Connie Gordon, served as IWG's corporate secretary-treasurer. Martin Christensen, a longtime fire sprinkler system designer for IWG, owned 1.5 percent of the corporate stock and served as corporate vice president.

Gordon has been a longtime member of Local 699 and, until the events in controversy herein, had a good relationship with the Union. IWG had for many years recognized the Union as the representative of its sprinkler fitters and signed a series of collective-bargaining agreements with it. The final agreement with the Union was entered into by IWG in April 1991.

In the period of 1989–1990 IWG experienced significant and continuing financial and commercial difficulties. The amount of work was substantially reduced over time with the bargaining unit shrinking from over 40 sprinkler fitters to fewer than 10. Gordon discontinued bidding for work in the spring of 1991. As existing field work ended unit employees were discharged. By early summer the unit compliment was eliminated and no work remained save the Price Club job discussed infra.

[2] Gordon testified that employee participation in ownership of Fabco, Inc. resulted in employee interests in IWG after the merger of the two entities which were liquidated over time with only Christensen retaining an interest as described above by the time of the events in issue herein.

Respondent IWG as of the time of the hearings herein was not engaged in business, had not been for some time and no suggestion was made that it was to resume business in future. The corporate entity was without assets.

b. *Martin Christensen and Con-Bru*

Martin Christensen was at all times material the sole owner of Con-Bru, which was incorporated under prior ownership and acquired as a shelf corporation.[3] Christensen was its corporate president and Connie Gordon was its corporate secretary-treasurer. The two individuals were also the sole corporate directors. Con-Bru acquired from IWG its trade name AAA Fire Sprinkler, Inc., and phone number, leased IWG's commercial space and equipment and operated without substantial infusion of funds relying on IWG and Gordon's guarantees to suppliers. Virtually the only work performed by Con-Bru during its short life was a contract to perform fire sprinkler installation work at a Price Club building under construction in Denver, Colorado.

Con-Bru began its commercial life in late April 1991. Christensen left the payroll of IWG during this period. IWG had been awarded the Price Club contract, but had not commenced work on it and abandoned any intention to do so. Dealing with the Price Club contractor who was pressing IWG to start work on its contract, Con-BRU obtained the contract for apparently the same amount of money as IWG and, using IWG's licenses to obtain appropriate permits, started the Price Club job.

To start work Con-Bru hired sprinkler fitters, none of whom were unit member sprinkler fitters employed by IWG. Con-Bru neither recognized the Union nor paid contract rates. By mid-June 1991 Con-Bru had finished the Price Club job and, having virtually no other significant work, ceased operations. Arlene, as discussed infra, hired its unit employees and took over the IWG space and equipment heretofore leased by Con-Bru.

Respondent Con-Bru soon thereafter ceased all business, became effectively defunct and, as of the time of the hearings herein, was without assets and effectively judgment proof.

c. *Carl Welch and Arlene*

Carl Welch had been an employee of another fire sprinkler contractor for many years and was active in fire sprinkler industry professional associations. He resigned his employment in April 1991 and, following a brief vacation period, entered into discussions with Gordon about a new company in the fire sprinkler business.

Welch determined to go into business in late May or early June 1991. Welch acquired Arlene as a shelf corporation and, on or about June 24, 1991, became Arlene's corporate director, president, and treasurer. Welch's wife became its corporate secretary. There were no other corporate officers.

In the June–July 1991 period Arlene commenced commercial operations. Over the first few weeks and months Arlene assumed Con-Bru's interests and obligations in the equipment of IWG and thereafter contracted to purchase the equipment. Arlene acquired a lease to the property used by Con-Bru subleasing a portion to IWG. Arlene operated under the

[3] The name was taken without change and was based on the first names of Connie and Bruce Gordon.

business name AAA Fire Suppression, Inc. In mid-July Welch met with the Con-Bru unit employees and hired them at the rates they received from Con-Bru.

The enterprise started somewhat slowly until sufficient orders could be acquired. Over time work was acquired with the operation expanding in the early part of 1992 to some 20 or more sprinkler fitters. After slightly more than a year's operation however, Arlene ceased operations, employees were laid off, and no further commercial activity was conducted beyond Welch's involvement in the final conclusion of Arlene's affairs. Although the corporation is still in existence, as of the time of the hearings herein Arlene was completely shut down and devoid of funds.

2. Events respecting the settlement agreement

At the original hearing respecting this matter, but before the record opened before the then-assigned administrative law judge, the parties entered into an informal settlement agreement which asserted, inter alia, that the Respondents would pay to seven named individuals "amounts of backpay plus interest to be computed by the Regional Director in accordance with existing Board formula as determined during compliance proceedings."

There is no dispute that no moneys were ever paid by any Respondent under the terms of the settlement agreement. Respondents Con-Bru and Arlene at the time were in essence moribund and were never asked by the Government to make payment. Gordon testified that the amount finally determined by the Regional Office of the Board under the formulation quoted above was more than double what he expected and was therefore unacceptable.

B. *Analysis and Conclusions*

1. Threshold credibility resolutions

The record in the instant case comprises thousands of pages of testimony and hundreds of pages of exhibits. As covered very briefly above, the litigation addresses the internal workings of three entities and a myriad of financial transactions in very substantial detail. The testimony of a variety of witnesses was sharply attacked by litigants and much of the documentary evidence was under challenge in significant ways as sham, contrived or misleading.

No record containing such a wide variety of contested events and circumstances may be simplified into an "us against them" unitary resolution of disputed events or by the crediting of one side's witnesses or the other's in all or nothing terms. Further it is often true that witnesses testimony, even though seemingly in conflict with others regarding particular events, may be resolved in part through an understanding that recollections differ and honest witnesses may have perceived and/or recalled events and circumstances differently.

Much of the factual contest herein, however, dealt with events that were described in diametrically opposed testimony. Thus, many of the Government's witnesses described a series of events and transactions which were, in the testimony of some, part of a plan or scheme to conceal important corporate and personal relationships and activities in order to avoid certain legal responsibilities. Certain of Respondent Gordon's witnesses testified that, in effect, the Government's witnesses were making willfully false accusations based on ulterior motives. Thus, to an unusual degree the testimony herein was diametrically opposed and, to the extent each side's witnesses supported one another, an all or nothing proposition. Further the important, but differing versions of events were testified to by a relatively small number of critical witnesses.

In order to present the complicated facts in an intelligible manner, it seems appropriate to deal first with the fundamental factual dispute over whether there was, as the General Counsel and the Charging Party contend, a scheme in place or, as Respondent Gordon contends, such evidence is but the product of bias and should be disregarded. Accordingly, certain of the credibility issues presented by the testimony are resolved immediately below.

a. *The Welch-Gordon dispute*

At the core of the evidence and argument in the case is the fundamental conflict between the versions of events of Carl Welch and Robert Gordon. In very lengthy testimony in multiple sessions on the witness stand over the many months of trial, Carl Welch asserted that he and Robert Gordon entered into a conspiracy to fool the Union and the National Labor Relations Board into accepting the proposition that Arlene was sufficiently independent of Gordon, IWG, and Con-Bru so that it was: (1) not legally obligated in anyway either to pay backpay to or employ the employees discharged by IWG; (2) not legally obligated to follow the then-current collective-bargaining agreement; and (3) not bound to recognize and bargain with the Union. Welch testified that the primary goal of the conspiracy was to create the impression that Robert Gordon was at arms length with and not otherwise involved with Arlene's affairs when, in fact, Gordon was a secret equal partner with Welch and actively and equally involved in its operation. Welch's testimony was also critical to the relationships between Gordon, IWG, and Con-Bru because it strongly suggested that the scheme respecting Arlene was but the continuation of a manipulation of IWG and Con-Bru involving Gordon, his spouse, and Christensen.

Welch testified that the various means the individuals used to hide the reality of the relationship of Gordon, IWG, and Con-Bru with Welch and Arlene included, but was not limited to: (1) the submission of deliberately false affidavits to the National Labor Relations Board investigating the union charges involved herein; (2) the false holding out of Welch as the sole owner of Arlene in all its commercial and legal dealings including corporate and personal tax filings and declarations, other governmental and regulatory submissions, and bank and lender applications; (3) the maintenance of fraudulent books of account including a variety of manipulated financial transactions involving IWG, Con-Bru, and Arlene; finally (4) the entry into secret, oral, and written agreements respecting Robert Gordon's ownership and control of Arlene; and (5) the concealment of the extent of Robert Gordon's ongoing supervision and participation in the day-to-day management of Arlene.

Robert Gordon categorically denied the assertions of Welch as patent lies. Counsel for Gordon argued Welch's allegations were calculated falsehoods arising from Welch's desire to extort from Gordon a release of a $50,000 obliga-

tion which Welch and Arlene incurred.[4] Further, Respondent Gordon asserted that Welch, during the preparations for the defense of an earlier stage of this matter, directly and through counsel, threatened to testify adversely to Gordon's defense in the case unless Gordon released him from any and all obligations arising out of Gordon's payments to Arlene. When Gordon declined to acquiesce in the attempted extortion, Respondent Gordon argues, Welch in effect concocted his testimony so as to cause injury to Gordon and to curry favor with the prosecution.

Although the differing versions of events testified to by Gordon and Welch cover a myriad of events and circumstances, a critical difference turned around the disputed existence of an option for purchase of stock which purportedly gave Bruce Gordon the option to acquire half of Welch's ownership interest in Arlene and its relationship to a promissory note entered into in July 1991 between Robert Gordon, Carl Welch, and his wife which on its face obligated the Welches for the sum of $50,000 at specific terms and interest.

Welch testified that as equal partners he and Gordon intended to contribute $50,000 each to Arlene. Since Gordon's interest was not to be revealed, a promissory note and a stock purchase option agreement were prepared so that Gordon's secret-ownership interest in Arlene would be protected by the promissory note and option, but outsiders would not realize from the documents the underlying reality of Gordon's equity interest in the corporation. Thus, in Welch's testimony Arlene could hold itself out as independent from the troubles of Gordon, IWG, and Con-Bru and, at a later time when "the NLRB had gone away," Gordon's option could be exercised via the promissory note and Gordon's true interest formally established.

Welch testified that initial draft stock purchase options were prepared by counsel vesting in Gordon and Martin Christensen the right to acquire portions of Welch's 100-percent interest in Arlene. Thereafter Welch and Gordon learned that such an agreement would make Arlene vulnerable in the ongoing labor difficulties. Thereafter, in Welch's testimony, Gordon and Welch had a second version prepared which eliminated Christensen from the option and substituted a friend of the Gordon's as the option holder so as to better conceal Gordon's property rights by using the intermediary to further insulate Gordon's relationship to the corporation. Welch testified he signed this latter document on or about August 1, 1991, and gave the signed copy to Gordon. The first draft of the document was entered into evidence, but Welch testified he had searched for but could not locate a copy of the later or final version of the document.

Gordon testified that he made a loan to Welch and in connection with that loan the draft of a stock purchase agreement was prepared by counsel, Charles Molling, to provide security for the loan. Thereafter, in Gordon's recollection, labor counsel was consulted to "see if that had any significance with the labor situation." Counsel advised against entry into the arrangement and, accordingly, the draft was never finalized nor entered into nor was any other draft. Ultimately, Gordon testified, the promissory note for the loan was not secured by any other agreement.

Counsel Charles Molling testified that in June or July 1991 at a time he was representing both Gordon and Arlene, he prepared the option agreement draft in evidence in conjunction with the promissory note and thereafter learned, following a review of the matter by separate labor counsel, that such a potential ownership interest on Gordon's behalf could create labor problems for Arlene. He also testified he had prepared a second draft of the stock option agreement naming a friend of Connie Gordon as the optionee rather than Gordon. Molling testified that he did not know if the second version or any version of the stock agreement had been finally signed, but thought it unlikely since he believed labor counsel was advising against, the entering into of any agreements creating ownership rights of any kind by Gordon in Arlene.

Counsel Robert Miller, who was Arlene's counsel at the time preparing a defense to the instant action, testified that in June 1993, Carl Welch informed him that "the prior note that I knew about was a $50,000 note from Bruce Gordon, loaning money to Arlene, was not in fact a note but was in fact an indication of 50 percent ownership in the company." Within a few days Miller testified he convened a meeting in his office with Welch, Gordon, and Gordon's then-counsel, Cecil Hedger, to discuss the matter. Miller testified that when the subject of Gordon's ownership in Arlene was raised: "Bruce Gordon at that time told me that, no, he didn't have any ownership. But what he did have was some kind of a lease option which would allow him to step in if he chose to do so in the future." Miller's notes of that meeting, entered into evidence, contain the reference, which Miller testified addressed Gordon's statement: "lease/purchase option No ownership." Gordon was present in the courtroom during this testimony and testified the day following the testimony of Miller. Acknowledging that he had heard Miller's version of the meeting, Gordon asserted that while it was possible that he may have mentioned the lease option agreement respecting equipment, the ownership of Arlene was not mentioned.

In resolving the multivarious conflicts in the testimony of Welch and Gordon I have considered the testimony of the other corroborative witnesses, the demeanor of the two individuals and the general probabilities of the scenarios painted by each. I have also considered the interests of each in the outcome of the litigation both directly and indirectly. Further, I accept the arguments of counsel for Respondent that under Welch's version of events he has admitted to the filing of knowingly false affidavits and statements to various bodies and organizations including the Internal Revenue Service and the Regional Office of the Board in conjunction with the instant case. Having considered all the above and the record as a whole, I credit the testimony of Welch and discredit the testimony of Bruce Gordon where the two differ.

I make this fundamental credibility resolution in part on the demeanor of the two witnesses, in part because of the demeanor of others including the witnesses found credible below and in part of because of the testimony of counsel Miller which I credit here over the denial of Gordon. Miller,

[4] There is no doubt that Gordon paid over moneys to Welch and that, as Gordon contends, if the moneys were a simple loan then Welch may be liable for repayment. If, on the contrary, as Welch contends, the moneys were paid by Gordon into the corporation as a secret-ownership contribution, then there may be no current obligation on the part of Welch to pay Gordon. During the hearings, Welch commenced a state legal action to have the contested obligation declared invalid.

whose demeanor convinced me he was testifying truthfully and whose notes suggested his memory was accurate, attributed to Gordon the important admission that he had a right to "step in if he chose to do so in the future" respecting Arlene. I find there is no reasonable interpretation of Gordon's remarks as testified to by Miller in the context of the conversation that was occurring on that date—and despite Gordon's discredited attempt to cast his statement with another, benign meaning—but that the second draft of the stock purchase agreement, or a later version, had in fact been signed.[5] This is a critical fact which supports Welch's entire line of testimony and impeaches Gordon's entire version of events.

Further, and independent of that rationale for the credibility resolution, I find that the uncontested evidence of Gordon's role in Arlene on this record: a $50,000 loan, if Gordon is to be credited, various financial guarantees, the preparation of a stock option draft with the named beneficiary a friend so as to conceal the identity of Gordon as the true beneficiary in fact, and the myriad of undisputed financial transactions between Gordon, IWG, Con-Bru, and Arlene—all—point to a much closer relationship between Welch and Gordon than Gordon admits to or is consistent with his view of events. The employment contract Arlene signed for Gordon, Arlene's carrying of life insurance on Gordon, the payment of certain of his expenses, all this and more, are far more consistent with Welch's testimony characterizing their relationship than Gordon's.

In summary, and doing so in explicit recognition that the General Counsel bears the burden of proof in establishing his prima facie case, I credit the testimony of Carl Welch over that of Robert Gordon where the two differ. In review, I do so in part on demeanor grounds, in part based on the probabilities given the testimony of other credited witnesses in this matter as set forth in greater particularity below, and in part on the probabilities given the uncontested evidence respecting the relationship between Gordon and IWG and Welch and Arlene.

b. *The testimony of Dean Highland*

Dean Highland was an employee of Con-Bru on the Price Club job and was also briefly an employee of Arlene. Having been laid off by Arlene in September 1991, he contacted the Union, offered to tell all he knew respecting the events in dispute herein and came to be an affiant and witness for the General Counsel. Although many years at the trade in nonunion jobs and having tried on two earlier occasions to enter the Union's apprenticeship program, Highland, soon after cooperating with the Union and giving an affidavit to the Regional Office, entered a union-employer sponsored apprenticeship program at a favorable level with certain credit for time in the industry. At the time of his testimony he had progressed to journeyman sprinkler fitter and was working for an employer under a union contract.

Highland testified that Bruce Gordon was actively involved in the hire and direction of the Con-Bru Price Club job work force and that Gordon and Martin Christensen sought to conceal that level of participation from the Union. This testimony was specifically denied by Gordon and was inconsistent with the testimony of Christensen. Highland also testified to specifics of the Con-Bru to Arlene transition which are damaging to Respondent IWG, Respondent Con-Bru, and Respondent Gordon's claims of independence and arm's-length dealings between and among Respondents.

Counsel for Respondent argues that Highland's testimony was fabricated in exchange for favorable consideration by the Union, i.e., the apprenticeship and later union employment, and should be discredited. Counsel further suggests the apparent specificity of Highland's recollection of certain dates is inconsistent with his pretrial affidavit and other documentary evidence in the record and his vagueness and failures of recollection in other areas are unbelievable and further evidence of fabrication.

I have considered counsel for Respondent's skillful attack at trial and on brief of Highland's veracity and reject the arguments made. Simply put, I found Highland to be a truthful witness attempting to accurately relate events as he remembered them. I agree with Respondent Gordon that Highland's dates and time placement of events was sometimes imprecise, but I do not find that fact fatally inconsistent with my determination he was honestly trying to relate what he knew. It is also true that he admittedly came to the Union prepared to give them information on the AAA Fire Sprinkler situation at a time he was angry at having been laid off by Arlene and that soon thereafter the Union made efforts which were ultimately successful to enroll him in an apprenticeship program he had repeatedly been unsuccessful in entering up to that time. These are relevant factors which tend to undermine Highland's credibility and they have been considered herein. On balance, however, I find these adverse factors outweighed by the favorable impression I took from his demeanor and from the fact that his version of events is consistent with those described by Welch whose testimony I have credited above and is also consistent with the other evidence discussed, infra, that shows a close degree of participation and control of Con-Bru by Gordon and a desire by both Christensen and Gordon to conceal that fact.

c. *The testimony of John Fiorello, the Vancenbrocks and William "Grub" Version*

Respondent argues that the testimony of John Fiorello, Arlene's bookkeeper, should be discredited because of his friendship and working relationship with Welch. Fiorello's testimony generally went to the financial transactions of Arlene, to an explanation of some of its financial and bookkeeping records and to its financial relationships and transactions with IWG, Con-Bru, and Gordon and Welch. The testimony is very harmful to Respondent Gordon's case for it corroborated Welch's version of events and identified a myriad of financial transactions which involved off record, manipulated, and fraudulent entries designed to conceal or miscast monetary transactions and accounts between and amoung Respondents. In effect Fiorello admitted he was party to a conspiracy to hide what really was transpiring respecting the relationships between Respondent's and in his role as an accountant "cooked the books" to further that scheme.

I have considered the testimony of Fiorello in light of the record as a whole and his demeanor during his testimony. I

[5] Although Counsel Molling testified he did not believe that the document had ever been executed, it is not beyond reasonable belief that clients—Welch and Gordon here—would take actions they did not thereafter share with their counsel.

credit his testimony where it is not otherwise contradicted. I also credit his testimony over the contrary testimony of Gordon where the two differ. This is so even though by his own admission he participated in a scheme to conceal and distort the financial transactions of Arlene, Welch, and Gordon. I do so because he had a persuasive demeanor, created the impression he had put his acquiescence in a fraudulent scheme behind him, and further because he was corroborated by Welch, who I have credited over Gordon, supra. Again Fiorello's testimony is consistent with other credited testimony respecting a course of conduct undertaken by Gordon and others in dealing with the corporations at issue herein. While Gordon testified at length respecting various financial transactions in an attempt to put a benign interpretation on them, I find that Fiorello's credible testimony corroborated by Welch simply overwhelmed his efforts. Gordon is discredited wherever his version of events differs from that of Fiorello.

William "Grub" Vierson is a union member who acted as its agent assigned the investigation of the circumstances underlying the relationship of Gordon, IWG, Con-Bru, and Arlene. He testified respecting his visits to jobsites and research into commercial records respecting the ongoing events herein. Respondent Gordon argues that his testimony is "manufactured and false" (R. Gordon's Br. 22), because of his partisanship in the dispute and because his notes were often incomplete and inconsistent. Based upon his demeanor I believe that Vierson testified truthfully as to the time, place, and circumstances of his observances during the course of his investigation of the Gordon dispute. Accordingly, I credit his testimony.

Leslie Vancenbrock acted as office manager for IWG and testified to her duties for IWG and her efforts on behalf of the Gordon's rental properties. She also testified that the Gordons discussed with her in early 1991 their intention to go "non-union" after they had finished doing the "union jobs" with "union workers" and described the enthusiasm of Gordon at the creations of the "non-union" corporation, Con-Bru. As a transferee from employment by IWG to employment by Con-Bru, she testified regarding the essential transfer of business from IWG to Con-Bru. Her testimony tended to support the claims of the General Counsel and the Charging Party that the Gordons did not honor the distinctions between personal and corporate structures and that Con-Bru was but a device being used to avoid statutory obligations.

Rick Vancenbrock, husband of Leslie, testified to his recruitment as a sprinkler fitter by Bruce Gordon in early 1991 for "non-union" jobs and his eventual hire by Gordon rather than Christensen as a Con-Bru sprinkler fitter on the Price Club job for a brief period. He testified that during his employment on the Price Club job, he regularly reported to Gordon respecting the state of the job by telephoning him in the evenings from his home.

Respondent Gordon challenged the testimony of the Vancenbrocks as incredible and biased. I have considered the testimony of each in the context of the record as a whole and, importantly, their demeanor while testifying. I found each to be a persuasive witness and was convinced each was attempting to testify truthfully to what he or she experienced. I credit their testimony which is generally consistent with the testimony of others respecting the concealed role of Gordon in supervising the Con-Bru work and in illustrating the interrelationships between the Gordons and the corporate respondents.

2. The settlement agreement

Before considering any of the alleged unfair labor practices in the complaint, the propriety of the Regional Director's setting aside the settlement agreement must be addressed. There is no dispute that the settlement agreement on its face provides only a general formula for determining the quantum of backpay and other relief for the named individuals. It is also undisputed that no moneys have been paid nor other action taken to comply with the settlement agreement. Finally, it is also clear that the signatory Respondents at all times have been and were at the time of the close of the hearing herein either unable or unwilling to pay the amounts determined by the Regional Director as appropriate under the settlement.

Given all the above it is clear and I find that the settlement agreement was properly set aside. Irrespective of whether or not the failure to agree upon what was required under the settlement's terms was based on mutual mistake or misunderstanding, inability to pay or simple obduracy or change of heart, it is clear that compliance with the settlement agreement has not been achieved. The Board's Rules and Regulations Section 101.9(e)(2) clearly provides that in such circumstances the Regional Director may set the agreement aside and institute further proceedings. I find, therefore, that the settlement agreement was properly set aside and is not in any way an impediment to addressing the unfair labor practice allegations of the complaint.

3. The relationship allegations of the complaint

In light of the multiplicity of the parties and the complexity of the allegations and underlying events, the individual allegations of the complaint dealing with the relationship of the Respondents will be separately presented below to be followed by the unfair labor practice allegations and other contentions.[6]

a. *The relationship of IWG, Con-Bru, Arlene, and Gordon, complaint paragraph 2*

(1) Specific complaint allegations

Complaint subparagraph 2(a) alleges that Con-Bru purchased the business of IWG on or about April 10, 1991, and continued to operate the business of IWG until about July 12, 1991, in basically unchanged form. Complaint subparagraph 2(c) alleges that Con-Bru was established by IWG and Gordon as a subordinate instrument to, and as a disguised continuance of, IWG. Complaint subparagraph 2(d) alleges that Respondents IWG, Con-Bru, and Gordon are alter egos and a single employer within the meaning of the Act and/or that Con-Bru has continued the employing entity and is a successor to Respondent IWG and Respondent Gordon.

[6] Although the allegations are discussed separately below for clarity's sake, the overall findings and conclusions reached herein are highly interdependent. Each finding and conclusion was determined upon consideration of the entire record and my findings and credibility resolutions respecting other allegations.

Complaint subparagraph 2(e) alleges that Arlene purchased the business of IWG/Con-Bru on or about July 12, 1991, and since then has continued to operate the business of IWG/Con-Bru in basically unchanged form and has employed as a majority of its employees, individuals who were previously employees of Respondent IWG/Con-Bru. Complaint subparagraph 2(f) alleges that Arlene was on notice of IWG/Con-Bru's potential liability before the Board as of July 16, 1991. Complaint subparagraph 2(g) alleges that based on the conduct alleged in subparagraphs 2(e) and (f), Arlene has continued the employing entity with notice of IWG/Con-Bru's potential liability to remedy its unfair labor practices and is a successor to Respondent IWG/Con-Bru.

Complaint subparagraph 2(h) alleges that at all material times Gordon has owned substantially all the stock of IWG, exerted personal control over IWG's daily labor relations, personally committed the unfair labor practices alleged in other paragraphs of the complaint, and personally decided to end IWG's existence and to create Con-Bru. Complaint subparagraph 2(i) alleges that because of the conduct alleged in subparagraph 2(h) Gordon is an alter ego of IWG and Con-Bru and is personally responsible for remedying the unfair labor practices of IWG and Con-Bru.

(2) IWG's relationship to Con-Bru[7]

(a) *Initial factual findings*

The complaint alleges that Con-Bru is an alter ego of, a successor to, a single employer with and a disguised continuance of IWG. The parties in excellent briefs on the issue address the various concepts. Respondent Gordon's brief perhaps best captures the state of the law in this area by noting that the relationships and distinctions between and among the doctrines of alter ego, single employer, and disguised continuance are "confused at best." There is no doubt that the analysis of each concept is fact driven and any proper analysis must be predicated upon specific findings as to each entity and its relationship to the others. It is therefore appropriate to recite my factual findings respecting the entities and their relationship before attempting to draw legal conclusions from those factual relationships.

I find that Gordon suffered financial reverses and diminishing business prospects in his operation of IWG into 1990 and 1991 in part from the cost of labor under the applicable collective-bargaining agreements. I further find that Gordon determined to abandon IWG and its obligation to recognize the Union and abide by the most recently signed contract and thereafter to continue in a different commercial arrangement while continuing to make his livelihood in the fire sprinkler industry. I find that Gordon attempted to achieve his expressed goal of "going non-union" by laying off IWG's unit employees, halting or winding down IWG's commercial work, and transferring[8] the remaining work contracted for, but not yet performed, i.e., the Price Club job, to Con-Bru, an entity Gordon had contemplated as a nonunion replacement for IWG, which completed the Price Club work with nonunion employees.

Con-Bru from the perspective of its customers and potential customers was virtually identical to IWG. Thus, it had the same trade name, AAA Fire Sprinkler, Inc., the same phone number, worked out of the same shop, and used the same trucks and equipment. Its only business of any significance, the Price Club job, was contracted for by IWG and essentially passed on to Con-Bru.

Con-Bru was a separate corporation putatively owned entirely by Christensen, IWG's only other stockholder, longtime IWG employee and IWG corporate vice president, and, in Gordon's testimony, largely run by Christensen. I find, however, that the apparent independence of Con-Bru from Gordon and IWG was largely sham and that in fact Gordon was the power behind the throne. Christensen initially testified that he had put no money into the corporation and seemed somewhat bewildered and unable to explain where the initial operating funds had come from. He later testified that he had years earlier acquired $5000 of IWG stock and that Gordon gave him $10,000 for that stock which was the start-up money for Con-Bru. Since IWG was essentially insolvent at the time this payment was made to Christensen by Gordon for the IWG shares, it is highly suspicious that Gordon would find it appropriate to value Christensen's small IWG stock interest at $10,000 and be able to supply the funds to Christensen at such a providential time for Con-Bru.

Christensen's testimony regarding the entire series of events was somewhat equivocal and his recollections were not firm, but seemed to bend to the perceived desires of his questioners. Thus, Christensen indicated that although he was the paper owner of the corporation, he and Gordon had "a gentleman's agreement that we'd be fair with each other." He often would characterize events and circumstances seemingly in a manner favorable to the General Counsel during examination by counsel for the General Counsel and reconsider under examination by Respondent Gordon's counsel.

I was not impressed with Christensen's demeanor as a witness nor the clarity of his memory. Further I simply do not accept Christensen's characterization of Con-Bru as relatively independent of Gordon or IWG. Rather I believe that Christensen well knew of Gordon's important role in managing and directing the entity, but as a witness was simply continuing to downplay a relationship he had long known would make life difficult for the corporations and for himself and Gordon. This view of events finds support in the testimony of other witnesses. Thus, Highland credibly testified that in his conversations with Christensen, Christensen told him that he should cooperate in keeping Gordon's substantial role in running Con-Bru secret. Based on this record, I find that during the events in question, Christensen was an active participant in attempts to keep Gordon's substantial and controlling role in Con-Bru under wraps.

My findings respecting Con-Bru do not depend simply on demeanor. Not only was Christensen's initiating role in Con-Bru suspect in light of the testimony of Leslie Vancenbrock, noted supra, that the Gordon's had in effect planned in advance for the role that Con-Bru was to play in their scheme to abandon the Union, virtually everything Con-Bru needed to commence operations was provided by IWG or Gordon in-

[7] There is no factual dispute that the actions and decisions of IWG were undertaken by its 98.5-percent shareholder, founder, president, and corporate director, Robert Gordon.

[8] IWG and Gordon did not have the power to transfer the work. The record indicates however that the contractor was anxious to have the fire sprinkler work begun and that Gordon and Christensen coordinated the arrangements so that Con-Bru could take over the IWG contract at what Christensen testified as "pretty close" to the same amount IWG had bid.

cluding commercial space, equipment and trucks, a trade name, inventory, phone number, and the sole customer for Con-Bru's services. Further, Respondent IWG and Gordon assisted Con-Bru with financial guarantees and use of licensees by mean of which Con-Bru could secure necessary business permits.

In addition, Gordon's role in the Con-Bru operations was far larger than the simple friendly advisor role he described. Christensen himself was of two minds as to Gordon's role in Con-Bru calling Gordon at one point the "unofficial CEO" of Con-Bru in both their eyes. Both Gordon and Christensen testified that Christensen was in charge of the field staff and hiring and firing of employees. I specifically reject this testimony. The testimony of Rick Vancenbrock and Dean Highland, which I credit over Christensen and Gordon in this regard, makes it clear that Gordon was in fact very much in charge of such matters, but well knew that this fact was to be concealed from outsiders because of its potential to create problems with the Union and the NLRB.

I find, in substantial parallel to the credited description of Gordon's relationship to Arlene as testified to by Welch, that Gordon was actively involved, indeed dominant in the formation and operation of Con-Bru and the hire, supervision, and control of its unit employees. I also specifically find that at the behest of Christensen and the Gordons every effort was made to conceal this fact so as to insure that the new corporate entity could successfully assert its independence from any of IWG's obligations to the Union, the laid-off employees, and the union contract.

(b) *Conclusions as to single employer*

Given these specific factual findings it is appropriate to apply Board and court law to the facts in order to determine if Con-Bru was an alter ego of, disguised continuance, single employer, and/or successor to IWG. The parties agree that the Board has traditionally considered four factors in determining if two entities are a single employer: interrelation of operations, centralized control of labor relations, common management, and common ownership.

Dealing with interrelation of operations, I have found that Con-Bru's sole commercial work of significance was work contracted for by IWG, but abandoned in favor of Con-Bru. The work was done using IWG's materials and equipment. Con-Bru's business was conducted out of the same office using the same trade name and telephone number. The work may, therefore, be regarded as identical and Con-Bru and IWA as having essentially identical operations.[9]

I have determined based on resolution of conflicting testimony, that Gordon was an active, if concealed, manager of Con-Bru involved in field work direction, hiring, and labor relations. I, therefore, find that as to both centralized labor relations and common management IWG and Con-Bru were essentially the same entity. Respecting ownership, I have concluded that although putative ownership of Con-Bru resided in Christensen, the source of the seed moneys for the corporation arose from a seemingly less than arm's-length liquidation of Christensen's stock ownership in IWG,[10] and that, irrespective of the surface financial status of Con-Bru, Gordon, and Christensen had a "gentlemen's agreement" to be "fair" with one another,[11] and that the corporation remained an essentially assetless entity leasing all its necessary operating requirements from IWG, Gordon, or obtaining necessary materials from suppliers under financial guarantees supplied by Gordon. Given these findings, I find that although ownership was technically different between IWG and Con-Bru, in essence the ownership interest is in doubt and control of both resided in significant part in Gordon. I find based on these substantive circumstances the two corporations should be regarded as if they were under common ownership.[12]

Given all the above, I find that for purposes of the bargaining unit involved herein and the work that Con-Bru did during its life of a few months, i.e., during its performance of the Price Club job, that the two were a single employer as that term is used by the Board.

(c) *Conclusions as to alter ego*

The Board considers somewhat broader factors in the determination of alter ego relationships: management, business purpose, operation, equipment, customers, supervision, and ownership and an additional factor, whether or not the motivation for the creation of the alleged alter ego was to evade contractual or statutory obligations under the Act.[13] Considering these factors, it is clear and I find that Con-Bru was the alter ego of IWG. As I have found supra, Con-Bru was a disguised continuance of IWG utilized by Gordon to complete IWG's work with nonunion employees and to hide its true existence as a dependent creation of Gordon and IWG. In fact, Con-Bru served virtually exclusively as a disguised extension of IWG using its trade name, location, phone number, and equipment. It relied on Gordon to supply the financial guarantees and underlying license to allow it to obtain supplies and conclude the Price Club job that IWG had originally obtained. When that job was concluded, consistent with the scheme described above, Con-Bru went quietly out of business and Gordon and Christensen continued their employment in the fire sprinkler industry by transmuting AAA

[9] It is true, as Respondent Gordon argues, that Con-Bru was doing small-scale work compared to IWG's larger operations in former times. The relevant period however was the diminuendo of IWG's commercial life. As to that final chapter, Con-Bru did no more than IWG would have done to complete its work.

[10] IWG at this time was in great financial distress and its stock would surely not have carried the value assigned to it. The payment to Christensen allowed Con-Bru to seemingly be owned by him. I find the financial circumstances of Con-Bru's creation simply to be another stage in the course of the disguise of the entities through which Gordon continued to do business in the fire sprinkler contracting business.

[11] Christensen's testimony makes this relationship clear. The record also reflects that Gordon and Welch, at Gordon's behest, intended to vest Christensen with a 10-percent stock interest in Arlene as a "gift." Although the gift was never consummated, it appears clear that the gentlemen's agreement respecting Christensen carried forward into the Con-Bru Arlene succession.

[12] Control over a corporation may in this context be regarded as a substitute for ownership. *American Pacific Concrete Pipe Co.*, 262 NLRB 1223, 1225–1226 (1962), enfd. mem. 709 F.2d 1514 (9th Cir. 1983).

[13] There is no dispute between the parties respecting the applicable law. The General Counsel cites *Kenmore Contracting Co.*, 289 NLRB 336, 337 (1988), Respondent Gordon *Perma Coatings*, 293 NLRB 903 (1989).

Fire Sprinkler, Inc. into AAA Fire Suppression, Inc. and Con-Bru into Arlene as will be discussed, infra.

(3) Arlene's relationship to IWG and Con-Bru

The General Counsel contends that Arlene should be held jointly and severally liable for the unfair labor practices of IWG and Con-Bru. Thus, the General Counsel seeks to invoke the doctrine of successorship liability for a predecessor's unfair labor practices established by the Board in *Perma Vinyl Corp.*, 164 NLRB 968 (1967), and affirmed by the Supreme Court in *Golden State Bottling v. NLRB*, 414 U.S. 168 (1973). The thrust of the doctrine is that successor employers may become obligated to remedy the unfair labor practices of their predecessors, if they take over the predecessor's operations with knowledge of the unfair labor practices committed by the predecessor.

Relying primarily on the credited testimony of Welch and Fiorello, as described supra, I have found that Arlene was equally owned by and controlled in fact by Gordon as part of a continuing scheme to avoid IWG's contractual and statutory obligations to the Union and its employees. I also credit Highland's version of events that Welch, Christensen, and Gordon met with Con-Bru's unit employees and in essence informed them that the identity of the Company had changed, but that things otherwise would continue as before and that thereafter this was true. Thus, at the conclusion of Con-Bru's commercial operations, Christensen and the unit employees commenced working for Arlene with little change in operations. Gordon, who had directed Con-Bru in the background, retained an important, if still concealed, role in the ownership and direction of Arlene, as described supra.

While certain formalities such as new employment applications were submitted by the Con-Bru unit employees to Arlene, the process was an after-the-fact effort to conceal the automatic aspect of the changes. I find the entire process of transferring operations from Con-Bru to Arlene was simply another step in the ongoing course of conduct or scheme creating and utilizing sham transactions to conceal the true continuity of Gordon's interests and participation in the entities. As with Con-Bru's continuation of IWG's operations, Arlene acquired from Gordon, IWG, Con-Bru, and the relevant bank, creditor, and landlord, the necessary rights to IWG's former commercial space, equipment, credit, and IWG's and Gordon's financial guarantees. Arlene utilized a similar trade name, AAA Fire Suppression, rather than the earlier trade name AAA Fire Sprinkler, and operated much as IWG had done in the fire sprinkler industry save for the fact that it did not honor the collective-bargaining agreement, recognize the Union, or offer the employees laid off by IWG employment. Welch testified that the ongoing difficulties with the Union also had an effect on Arlene's ability to obtain work.

Given all the above there is no question that Arlene[14] was a *Golden State* successor who, with Gordon as a hidden coequal partner with Welch, took over from IWG/Con-Bru with knowledge of the unfair labor practices of the predecessors. Accordingly, I find that Arlene is jointly and severally liable to remedy the predecessors' unfair labor practices. *Bell Co*, 243 NLRB 977 (1979). Further, given that relationship, the predecessors' liability for backpay and other make-whole aspects of the remedy continued to the conclusion of Arlene's employ of unit employees. *Golden State Bottling Co. v. NLRB*, 414 U.S. at 186–187.

(4) Gordon's liability for the unfair labor practices of IWG and Con-Bru

The General Counsel argues that Respondent Gordon is liable as an individual for remedying the unfair labor practices of Respondents IWG and Con-Bru under the theories enunciated in the following cases: *Ogle Protection Service*, 149 NLRB 545 (1964), and *Riley Aeronautics Corp.*, 178 NLRB 495 (1969).

In *Riley Aeronautics Corp.*, 178 NLRB 495 at 501, Administrative Law Judge Samuel Singer, with Board approval, set forth a guiding summary of Board law regarding when the Board will pierce the corporate veil:

> "[E]asily the most distinctive attribute of the corporation is its existence in the eye of the law as a legal entity and artificial personality distinct and separate from the stockholders and officers who compose it." Wormser, *Disregard of the Corporate Fiction and Allied Corporation Problems*, (Baker, Voorhis and Co., 1927), p. 11. "The insulation of a stockholder from the debts and obligations of his corporation is the norm, not the exception." *NLRB v. Deena Artware*, 361 U.S. 398, 402–403. Nevertheless the corporate veil will be pierced whenever it is employed to perpetrate fraud, evade existing obligations, or circumvent a statute. *Isaac Schieber*, et al., individually, and *Allen Hat Co.*, 26 NLRB 937, 964; enfd. 116 F.2d [281](CA 8 [1940]) [footnote omitted]. Thus, in the field of labor relations, the courts and Board have looked beyond organizational form where an individual or corporate employer was no more than an alter ego or a "disguised continuance of the old employer" *Southport Petroleum Co. v. NLRB*, 315 U.S. 100, 106; or was in active concert or participation in a scheme or plan of evasion (*NLRB v. Hopwood Retinning Co.*, 104 F.2d 302, 304 (C.A. 2); or siphoning off assets for the purpose of rendering insolvent and frustrating a monetary obligation such as backpay (*NLRB v. Deena Artware, Inc.*, supra., 361 U.S. 3980; or so integrated or intermingled his assets and affairs that "no distinct corporate lines are maintained" (Id. at 403).

See also *Chef Nathan Sez Eat Here*, 201 NLRB 343 (1973). The Board noted in *Las Villas Produce*, 279 NLRB 883, 883 (1986):

> [T]he appropriate test for alter ego status is the same whether the alter ego issue arises in the original unfair labor practice proceeding or in subsequent backpay proceedings.

In *Ogle Protection Service*, 149 NLRB 545, 546 fn. 1 (1964), enfd. in pertinent part 375 F.2d 497 (6th Cir. 1967), the Board reached "through" the corporate structure and assessed liability against individuals who: (1) owned all the stock of the corporation; (2) personally controlled the corporation; (3) personally guaranteed company indebtedness; (4) personally funded the business; (5) controlled the daily

[14] Welch, an undisputed agent of Arlene, in his lengthy testimony, for all intents and purposes admitted the successorship status of Arlene in the sense used here.

affairs of the business including labor relations, (6) solicited and procured business for the company; and (7) personally decided to end the Company's existence. See also *Ski Craft Sales Corp.*, 237 NLRB 122 (1978); *Carpet City Mechanical Co.*, 244 NLRB 1031 (1979); *Campo Slacks, Inc.*, 266 NLRB 492 (1983); *Stafford's Restaurant*, 271 NLRB 734 (1984); *Workroom for Designers*, 274 NLRB 840 (1985); *JMC Transport*, 283 NLRB 554 (1987); *O'Neill, Ltd.*, 288 NLRB 1354 (1988), where ownership, control and a personal role in the commission of unfair labor practices was a factor.

Although the two cases are treated as separate doctrines by the General Counsel, the Board has treated the *Ogle Protection* standard as but a subset of the *Riley Aeronautics* analysis and not as an independent theory of liability. See, e.g., *Dahl Fish Co.*, 299 NLRB 413 (1990). I shall follow that precept here.

Dealing initially with IWG independent of the interrelationships at issue herein, there is no factual dispute that IWG: (1) was owned and operated at all times by Gordon, (2) that Gordon held the highest corporate directorship and executive positions, and (3) that all its business decisions were made by him. Thus, at all times material herein Gordon was in total charge of IWG. From his testimony it is also true that he regarded, at least on a personal moral level, the debts and obligations of IWG as his own and endeavored to satisfy the corporation's creditors by putting additional assets into the corporation as necessary to fulfill its obligations.

Looking at IWG alone, and isolated from the events and circumstances arising in the context of the layoff of unit employees and the creation and operation of Con-Bru and later events, I find insufficient evidence of misuse by Gordon of the corporate forms so as to allow a piercing of IWG's corporate veil.[15] The true test of the General Counsel's assertions respecting IWG, however, must be taken at the time of the layoff of IWG employees, Con-Bru's startup, and subsequent events. Further, Gordon's relationship with IWG must be considered simultaneously with Gordon's relationship to Con-Bru[16] and IWG's and Con-Bru's relationship to one another and Arlene's relations with all the others.

I have found supra that Con-Bru was a single employer with, an alter ego and a disguised continuance of IWG. That analysis will not be repeated here. Under *Riley Aeronautics* and the cases cited in its quoted portion, supra, the alter ego and disguised continuance aspect of Con-Bru's relationship to IWG and Gordon are significant factors to be considered. There is another aspect of Con-Bru's creations, operation, and abandonment, however that is worth of discussion in this context.

It is clear on this record and I find that Con-Bru was not a corporation with a commercial life of any significance independent of IWG and Gordon. Con-Bru ultimately was used by Gordon as an interim device to put temporal and commercial distance between Arlene and IWG in order to maintain, if possible, the image of Arlene as an independent entity separate and apart from IWG, Gordon and the work undertaken by them. While it is not clear that Con-Bru was always so intended, when the Union continued to dog IWG and Con-Bru with unfair labor charges and lawsuits and when Arlene was approaching readiness to commence commercial operations, Gordon and Christensen pulled the plug on Con-Bru and, as discussed supra, apparently transferred employees, equipment, commercial space, etc. to Arlene. Thereafter, Christensen, Welch and, secretly, Gordon carried on business in Arlene's name, under the similar trade name AAA Fire Suppression, Inc. and simply abandoned Con-Bru.

While this use of the corporate form to cloak illegal motivations and to attempt to avoid statutory and contractual obligations is perhaps sufficient in itself to justify piercing the corporate veil and reaching Gordon individually, there is an additional aspect of the operations of Con-Bru that suggests a more traditional basis for invoking what has traditionally been regarded as an unusual and extraordinary remedy. That is the very marginal capitalization of Con-Bru and its essential abandonment upon completion of its assigned task.

Con-Bru apparently started with a capitalization of $10,000 received[17] by Christensen from Gordon under the unusual circumstances discussed, supra. There is no suggestion the initial capitalization was ever increased. Christensen was at all times the sole owner of record and he testified that he never put any money into the corporation but for the later recollected IWG stock moneys. Thereafter Con-Bru engaged in commercial operations the virtual entirety of which was the Price Club job. In engaging in its commercial venture Con-Bru acquired necessary licenses and bonds, obtained use of commercial space, trucks and equipment, dealt with suppliers, and generaly functioned as might any other contractor in the fire sprinkler industry. All of this would have been impossible without greater capitalization save for the initial and ongoing support of Gordon and IWG. Indeed virtually everything Con-Bru had or did either originated with, was leased from or guaranteed by Gordon or IWG. Further, Gordon, as found supra, participated in the creation of Arlene and assisted it, much as had been done with Con-Bru in relation to IWG, in taking over Con-Bru's employees and other trappings of fire sprinkler installation contracting, including supplier guarantees and licenses.

The net result of IWG and Gordon's efforts in this regard was the creation of and commercial holding out of a corporation, Con-Bru, which clearly had insufficient assets to commence or continue commercial operations, but for IWG and Gordon's actions. In this sense, IWG and Gordon, not only manipulated Con-Bru for improper purposes as described above, they brought into being a hot house flower unable to sustain itself outside their ongoing support and, when it was deemed appropriate, transferred its commercial necessities into yet another corporate entity also designed to engage in fire sprinkler installation contracting while concealing Gordon's role in its operation. It was also surely clear to Gordon and, perhaps, a part of his underlying motive in utilizing an

[15] It is clear however that the Gordons and IWG were not free from crossing the lines of legal identity and financial independence. Thus, the testimony of Vancenbrock makes it clear that IWG's payroll paid for work on the Gordons' substantial rental interests. Similarly, Arlene employees spend time working on the Gordons' rental houses.

[16] As a practical matter, if Gordon is held liable for the unfair labor practice obligations of Con-Bru, he is liable for the obligations of IWG because Con-Bru has been found, supra, a single employer and alter ego of IWG.

[17] The record does not in fact make it clear that Christensen ever in fact received the money. Rather it appears that much that was done in starting Con-Bru was done by the Gordon's with Christensen simply acting as the titular individual in control.

interim corporation between IWG and Arlene, that Con-Bru would not have the assets to remedy the unfair labor practices for which it was likely to stand liable.

Thus, Gordon and IWG in causing Con-Bru to operate as it did, created a situation wherein it was highly unlikely that Con-Bru would be able to fulfill its financial obligations respecting its disputes with the Union and its liability for unfair labor practices. Put another way, the course of conduct undertaken by IWG and Gordon to avoid the statutory and contractual obligations of IWG through the use of the Con-Bru intermediation led, in my view, inexorably to the situation wherein Con-Bru is without the financial wherewithal to satisfy its obligation under this decision.

While the more common veil piercing situation is presented when an individual strips a corporation of assets for personal benefit to the detriment of creditors, here, I find that Gordon and IWG in the course of advancing an improper and fraudulent scheme caused a corporation, not only to incur, but thereafter to be unable to remedy, its unfair labor practice obligations. I see no relevant distinction between the two situations described above in terms of the need to avoid injustice by piercing the corporate veil in each situation. Thus, for these additional reasons, I find it is appropriate to find both Gordon and IWG jointly and severally liable for the obligations of Con-Bru as found herein.

4. The unfair labor practice allegations of the complaint

a. *The Union's request for information*

Complaint paragraphs 11, 12, 13, and complaint attachments A and B allege that the Union requested certain relevant information of IWG respecting the bargaining unit in May and June 1991, and that IWG failed and refused to provide it. Complaint subparagraph 16(a) alleges this refusal violates Section 8(a)(5) and (1) of the Act.

There is no dispute and I find that the Union represented the employees of Respondent IWG in the following unit, which unit is appropriate for purposes of collective bargaining within the meaning of Section 9 the Act:

> All journeymen sprinkler fitters and apprentices employed by IWG excluding office clerical employees, guards and supervisors as defined in the Act.

Further there is no dispute that Respondent IWG had signed a series of collective-bargaining agreements with the Union respecting unit employees, the most recent effective by its terms from April 1, 1991, to March 31, 1994.

By letter dated May 7, 1991, the Union sent a letter to Gordon as president of AAA Fire Sprinkler, Inc. informing him that the Union had filed a grievance against AAA Fire Sprinkler, Inc. for subcontracting work to "Conbru [sic]" and asking for information respecting the Price Club job and Conbru. The letter requested:

> 1. The name, address, social security number and telephone number of all persons performing work under the contract.
>
> 2. The names and addresses of all projects and/or work sites where the persons identified to response to No. 1 performed work.
>
> 3. The wage rates and fringe benefit rates for each person identified in response to No. 1.
>
> 4. The office address and employment histories, including job titles and responsibilities, of all current and former officers and directors of AAA Fire Sprinkler, Inc. and "Conbru."
>
> 5. The names and addresses of all persons, corporation or other entities which are or have been owners of stock in AAA Fire Sprinkler, Inc. and "Conbru."

Martin Christensen responded to the May 7 letter by letter dated May 21. His response simply returned the Union's letter, asserted he had only purchased IWG's trade name, AAA Fire Sprinkler, Inc., and directed the Union to Gordon giving his address.

The Union then sent a letter dated June 7, 1991, to AAA Fire Sprinkler, Inc., by name, to Con-Bru, by name, and to IWG, Inc., by name, asking for more information respecting the persons involved in Con-Bru, IWG, their contractual relationships, and the unit work undertaken by them. The letter renewed the request for the above-quoted information and further requested:

> 1. Identify all owners, officers, directors and employees of AAA, I.W.G., Inc. and CON-BRU at all times from January 1, 1991 to the present.
>
> 2. Identify and describe in full any and all transactions among or between AAA, I.W.G. and/or CON-BRU including transactions between their principals and/or officers.
>
> 3. If you deny that AAA, I.W.G. and CON-BRU are bound to the current Local 669 national agreement, state in full detail the basis for your position.
>
> 4. Identify any and all work performed by AAA, I.W.G. or CON-BRU during calendar year 1991 that is not performed under the terms and conditions of the Local 669 agreement and, for each occasion, state the name, location and number of hours worked by employees on the job.

Gordon responded to the Union by letter dated June 20 to union counsel which acknowledged the request letter of June 7, but did not address the request for information other than to provide a copy of a general "to whom it may concern letter" dated April 11, 1991, announcing that IWG would no longer be doing business under the trade name AAA Fire Sprinkler, Inc. which, the letter noted, had been transferred to Con-Bru along with IWG's phone number.

The Union and IWG thereafter exchanged various correspondence in the context of the grievance and the then-pending charges filed by the Union. On July 2 the Union again requested the information through counsel asserting that the earlier requests had not as yet been answered. By letter dated July 8, 1991, Gordon on behalf of IWG identified the corporate positions of himself, his wife, and Christensen, and his own and his wife's interests in IWG and Con-Bru. The letter was not otherwise responsive to the requests.

The Union again pressed IWG by letter dated July 11. By letter dated July 18, 1991, Gordon denied that he had refused to supply information to the Union and enclosed his own and Christensen's "NLRB affidavits" taken in connection with the pending charges.

The General Counsel established and I find that at the time the Union made the information requests at issue herein it

had a reasonable belief that IWG and Con-Bru were a single entity in law. As the General Counsel argues on brief, such a showing makes proper a request for information respecting the relationship of others to the signatory employer and the consequences of their relationships and contracts to represented employees' unit work, *Walter N. Yoder & Sons*, 754 F.2d 531, 536 (4th Cir. 1985). See also *M. Scher & Son*, 286 NLRB 688 (1987). Respondent IWG was therefore obligated under the Act to timely respond to the Union's requests of May and June 1991. The General Counsel further argues that unreasonable delay in responding to the information requests "is as much a violation of the Act as a refusal to furnish any information at all. *Bundy Corp.*, 292 NLRB 671, 679 (1989)." (Br. 17.)

It is clear and I find that IWG's responses were not adequate at least until the time of the submission of the Board affidavits.[18] In agreement with the General Counsel and the Charging Party, I find that the delay between the May and June Union information request letters and the final submission of the Board affidavits of Christensen and Gordon by letter dated July 18, 1991, was too long given the time sensitive context then presented. Accordingly, I sustain these allegations of the complaint.

b. *The layoffs of IWG unit employees*

Complaint subparagraph 6(a) alleges that Respondents IWG and Gordon began discharging IWG's unit employees in April 1991; complaint subparagraph 6(b) alleges Respondent's Gordon and IWG did so because of the employees' union and protected concerted activities. Complaint subparagraph 6(c) alleges that Respondent Con-Bru on and after April refused to hire the employees named in subparagraph 6(a); complaint subparagraph 6(d) alleges Con-Bru declined to hire the employees because of their concerted and union activities. Finally, paragraph 15 of the complaint alleges that Respondents IWG and Con-Bru took the actions alleged in paragraph 6 in violation of Section 8(a)(3) and (1) of the Act.

There is no contention that IWG used nonunion employees or paid noncontract wages or benefits while performing unit work. There is also no dispute that IWG laid off its unit employees starting in the spring of 1991[19] and did not undertake its Price Club job which was done by Con-Bru with a compliment of unit employees which did not include laid-off IWG unit employees.

As Respondent Gordon notes on brief, the Supreme Court's decision in *Textile Workers v. Darlington Mfg. Co.*, 380 U.S. 263 (1965), makes it clear that a company may close its business and lay off all its employees—even if it takes a period of time—without committing an unfair labor practice irrespective of the motive for closing the business.

The General Counsel cites cases for the proposition that, if an employer creates an alter ego entity for purposes of avoiding its obligations to union represented employees and the union represented employees are discharged as a result thereof, the discharges violate Section 8(a)(3) and (1) of the Act, e.g., *Hydro Logistics*, 287 NLRB 602 (1997). He further argues that since the Board finds such conduct inherently destructive of employee rights, a finding of antiunion animus is not necessary to sustain the violation citing *D & S Leasing*, 299 NLRB 658 (1990). Finally, the General Counsel argues that, if the General Counsel sustains his burden of proving that IWG's unit employees were laid off as part of a scheme to avoid the contractual and statutory obligations of union representation, then Con-Bru, the alter ego, as well as IWG also violated Section 8(a)(3) and (1) of the Act by hiring new unit employees rather than the laid-off IWG employees.

I have found, supra, that Respondent's Gordon and IWG did in fact engage in a course of conduct designed to avoid their statutory obligation to recognize and bargain with the Union and to maintain union contract terms and conditions of employment. I have further found that they did so in conjunction with an alter ego, Con-Bru. I have also found that the employees were laid off by IWG and not hired by Con-Bru as part of a scheme to create the impression that Respondent Gordon and IWA were separate and independent from Con-Bru, so that the obligations of the former would not continue and apply to the commercial work of the latter.

Given these findings of fact, Respondent's *Darlington* argument is inapplicable since IWG lived on for all legal purposes relevant herein in Con-Bru. Rather, I find the General Counsel's cited cases are apt. Accordingly, I find and conclude that IWG violated Section 8(a)(3) and (1) of the Act when it laid off its unit employees in an attempt to avoid the obligations of its collective-bargaining contract and the statute. Further, I find that Con-Bru, when it failed and refused to hire the same unit employees for the same reasons and in furtherance of the scheme noted above, also violated Section 8(a)(3) and (1) of the Act.[20]

c. *Con-Bru's obligation to recognize and bargain with the Union*

Complaint subparagraph 14(c) alleges that since on or about April 16, 1991, Respondents IWG and Con-Bru has failed and refused to recognize the Union as the exclusive collective-bargaining representative of unit employees. Complaint subparagraph 16(a) alleges this conduct violates Section 8(a)(5) and (1) of the Act.

Since I have found that Con-Bru violated the Act when it failed and refused to hire the IWG unit employees, it follows that, if Respondent Con-Bru had not violated the Act in refusing to hire the IWG unit employees, those unit employees would have constituted the entirety of Con-Bru's unit.[21] In such circumstances the Board finds the Employer to be a constructive successor to the predecessor and takes the bargaining obligation of the predecessor. Further as a single employer with and alter ego of IWG, as found below, Respondent IWG was bound to the applicable collective-bargaining agreement as well. There is do doubt and I find that Con-

[18] In light of the violation found and the fact that IWG and Con-Bru are to all intents and purposes defunct, that it is unnecessary to consider if any parts of the information requests were left unsatisfied after the submission of the affidavits.

[19] Layoffs occurred on April 26, 1991, and thereafter into July as work ran out.

[20] Substantial evidence and argument was received respecting the supervisory status of certain of the employees. See the remedy section of this decision for a discussion of those issues.

[21] Since Con-Bru's unit employee compliment was smaller than IWG's not all IWG employees would have been hired by Con-Bru, but all Con-Bru unit employees would have been from IWG's unit.

Bru had a bargaining obligation with the Union upon hiring unit employees and that it at all times failed and refused to so recognize or bargain with the Union.

IWG as a single employer with Con-Bru respecting its unit employees and as part of an alter ego relationship designed to thwart union representation, was also obligated to recognize and bargaining with the Union respecting unit employees. Its failure to do so also violates Section 8(a)(5) and (1) of the Act.

d. *Con-Bru's failure to pay its unit employees contract rates*

The Charging Party argues at page 15 of its brief that Con-Bru violated the Act:

> by failing to abide by the terms of [IWG's] collective bargaining agreement with respect to its own employees, Con-Bru, as the alter ego of IWG violated Section 8(a)(5) of the Act. *Jo-Vin* [*Dress Co.*, 279 NLRB 525 (1986)]; *Nelson Electric*, 241 NLRB 545, 553 (1979), enfd. 638 F.2d 965 (6th Cir. 1981).

The General Counsel also argues on brief at page 59 that Respondents, which presumably includes Con-Bru, are obligated to "make whole all employees for loss of wages and other benefits they may have suffered as a result of Respondents' failure to abide by the terms of IWG's collective-bargaining agreement with the Union." The General Counsel argues further at page 59, "Replacement employees hired to work for Con-Bru . . . are also entitled to backpay computed at the contract rates."

Unlike other portions of this decision, the complaint paragraphs alleging this specific conduct as an unfair labor practice are not quoted herein because none exist. Respondent Con-Bru is alleged to have violated Section 8(a)(3) and (1) with respect to its refusal to hire IWG's unit employees and is alleged to have failed and refused to recognize and bargain with the Union respecting its unit employees in violation of Section 8(a)(5) and (1) of the Act. Each of these allegations has been sustained, supra.

Given my factual findings and the cases cited by the Charging Party and the General Counsel as well as *Spruce Up Corp.*, 209 NLRB 194 (1974), there is little doubt that Con-Bru would have been obligated under the Act to apply the contract to its unit employees and no doubt that Con-Bru did not do so. The threshold issue in any unfair labor practice proceeding, however, must always be: under controlling law does the complaint put this allegation in issue?

Generally the complaint must put Respondent on notice of the allegation and provide sufficient notice for a proper defense. The issue here is whether or not the allegations respecting the 8(a)(5) and 8(a)(3) allegations in the complaint subsumed the failure of Con-Bru to apply the contract terms to its employees.

The Board addressed a similar scope of the complaint argument in *Worchester Mfg.*, 306 NLRB 218 (1992). In that case a respondent argued that a judge directed status quo ante remedy under the Board's *Spruce Up* doctrine was impermissible because the General Counsel did not specifically plead in his complaint such a violation or desired remedy. The Board held that sufficient notice in that case arose from the pleading and litigation of a successorship relationship. Further the Board majority in *U.S. Marine Corp.*, 293 NLRB 669 (1989), asserted at 672:

> Requiring the Respondents to restore the predecessor's terms and conditions of employment does not violate any principles of due process because this is strictly a remedial matter that does not have to be specifically pleaded. *The Love's Barbeque* [*Restaurant*, 245 NLRB 78 (1969), enfd. in relevant part sub nom. *Kallman v. NLRB*, 640 F.2d 1094 (9th Cir. 1981)] remedy that we order here does not require a specific complaint allegation that the Respondents made unlawful unilateral changes when they began their operations. Nor must this remedy rest on a separate finding that the Respondents committed a separate unfair labor practice by unilaterally changing employment terms. The illegality of such changes is subsumed in the boarder 8(a)(5) and (3) allegations and violations in the case.

In the instant case the pleadings and litigation of the relationships between Respondents, the specifically alleged failure of Respondents to hire the former IWG unit employees and the at hearing statements by the General Counsel that contract terms and conditions of employment should be applied to Respondents' bargaining unit and should be required in any directed remedy, all convince me that the direction of a status quo ante remedy respecting Con-Bru is appropriate herein.

5. Additional contentions regarding Arlene

a. *Arlene's liability to restore the status quo ante*

The Charging Party, on brief at page 16, further argues:

> Moreover, because Arlene acquired the business with knowledge of the predecessor's misconduct and retained the Con-Bru employees, Arlene was not free to establish the employees' wages and those employees' continued to be entitled to compensation at the local 669 contract rates. *J.R.R. Realty Co.*, [301 NLRB 473 (1991), enfd. 955 F.2d 764 (D.C. Cir. 1992), cert. denied 121 L.E.2d 52 (1992).]

Thus, the Charging Party argues that Arlene, like Con-Bru discussed, supra, should be liable to restore the status quo ante, i.e., contract provisions, with respect to its own unit employees.

The General Counsel argues on brief at page 59:

> Here, as in *J.R.R.*, [supra] after the predecessor IWG/Con-Bru unlawfully discharged unit employees and hired others at lower wages, the successor Arlene acquired the business with knowledge of the predecessor's misconduct and retained the employees employed at the time of acquisition of the business. Thus, Arlene was not free to establish employees' wages, and backpay due the discriminatees is to be based on the rates in the IWG contract with the Union. Replacement employees hired to work for Con-Bru and Arlene are also entitled to backpay computed at the contract rates. *J.R.R.*, supra at 473.

The General Counsel also argues on brief at page 59 that all Respondents should be ordered to "make whole all employees for loss of wages and other benefits they may have suffered as a result of Respondents' failure to abide by the terms of IWG's collective-bargaining agreement with the Union."

The complaint alleges at subparagraphs 14(a) and (b) that Arlene was obligated to recognize and bargain with the Union. I have sustained the allegation, supra. Again, as with Con-Bru, there is no specific complaint allegation respecting the failure of Arlene to apply the contract terms and conditions. As noted in my consideration of the issue as to Con-Bru, supra, in particular the quoted language of *U.S. Marine*, supra, it is clear that such a remedial order need not depend on a specific complaint allegation or unfair labor practice findings respecting unilateral changes.

Based on the arguments and authority of the General Counsel and the Charging Party and the analysis set forth above respecting the same contentions as to Con-Bru, I find that Arlene should be ordered to restore the status quo ante with respect to its own employees.

b. *The liability of Robert Gordon for Arlene's liabilities herein*

The complaint alleges in subparagraphs 2(e), (f), and (g) that Respondent Arlene is a *Golden State* successor to Respondents IWG and Con-Bru. It also alleges in complaint subparagraphs 14(a) and (b) that the Union sought and Arlene refused to recognize it as the exclusive representative of Arlene's unit employees. Complaint subparagraph 16(b) alleges this conduct by Arlene violates Section 8(a)(5) and (1) of the Act. These allegations have been sustained, supra. The complaint alleges, at subparagraphs 2(h) and (i) that Respondent Gordon is an alter ego of Respondent's IWG and Con-Bru and personally responsible for their unfair labor practices. The complaint does not allege that Respondent Gordon is an alter ego of, nor personally responsible for Arlene's unfair labor practices.

The Charging Party on brief argues that Gordon, as a result of his commingling of assets with and control of Arlene in the context of the concealed relationship and illegal purpose of Arlene, should be held liable for Arlene's unfair labor practices. The Charging Party also argues at footnote 13 at page 16 of its brief:

> The Judge may appropriately make a determination that Arlene is the alter ego of, as well as successor to Con-Bru. *Automated Waste Disposal, Inc.*, 288 NLRB 914, 919–920 (1988). The record shows that Arlene is also the alter ego of Con-Bru and IWG/AAA as well as its successor.[22]

The last line of the General Counsel's brief asserts at page 59: "In summary, it is General Counsel's position that IWG, Con-Bru, Gordon, and Arlene are jointly and severally liable for all discriminatees and replacement employees until July 18, 1992."[23]

In *Automated Waste Disposal*, 288 NLRB 914 (1988), the Board adopted the decision of an administrative law judge who held that three companies were single employers where the complaint had not named two of the companies as co-respondents and the General Counsel's trial motion to amend the complaint to do so had been denied. The judge concluded that the close relationship of the three companies and the fact that the respondent had had "ample notice and opportunity to be aware of the implications regarding all the companies" allowed the finding that the three companies knew from the beginning they were all involved in the proceeding.

Having credited the testimony of Welch respecting the relationship of Respondents herein, and on the basis of an analysis similar to that set forth, supra, respecting the liability of Gordon for the unfair labor practice obligations of IWG and Con-Bru, I have no difficulty in finding that Gordon and Arlene were alter egos and that Gordon should be jointly and severally liable for the unfair labor practice remedy obligations of Arlene. Indeed the relationship between Arlene and Gordon, primarily because of the hidden ownership and control, fraudulent financial transactions, and deliberate and willful execution of a concealed course of conduct designed to defraud the Union, the alleged discriminatees, and to deceive and defeat the National labor Relations Board and the purposes of the statute, is the most clear of Gordon's alter ego relationships with the other Respondents. Accordingly, I find in accordance with the General Counsel's and the Charging Party's requests that Gordon be held to the unusual remedy of being made jointly and severally liable for Arlene's obligations herein.[24]

REMEDY

Having found that Respondents have engaged in certain unfair labor practices, I shall order them to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes and policies of the Act.[25] In view of the fact that no Respondent is currently in operation, I shall require Respondents to mail copies of the notices involved herein to the last known address of the relevant unit employees. With respect to the appropriate remedy of the violations of Section 8(a)(3) and (5) of the Act , I shall generally apply the teachings of *Fremont Ford*, 289 NLRB 1290, 1297–1298 (1988).

[22] Since I have found that Gordon is an alter ego of Con-Bru and liable for remedying its unfair labor practices, if Arlene is an alter ego of Con-Bru, Gordon becomes liable for Arlene's obligations through Con-Bru.

[23] Respondent Gordon has been held jointly and severally liable for the unfair labor practice remedies directed at IWG and Con-Bru. Those entities are in turn liable for all the unfair labor practice remedial provisions directed herein but for the obligation of Arlene to recognize and bargaining with the union and to restore the status quo ante. Thus it is only those latter provisions of the remedy respecting which the liability of Gordon is practically at issue.

[24] As the Charging Party notes, the Board finds it permissible to establish this extended liability at the compliance stage. *Southeastern Envelope Co.*, 246 NLRB 423 (1979).

[25] The record is clear that none of the Respondents herein remains in operation or employs unit employees. Accordingly, no requirement that the entities offer reinstatement to employees is contained herein. Since it is possible that any or all of the entities may resume operation in future, however, the orders shall contain language requiring the discriminates herein to be offered employment in the event that unit employment is resumed by any Respondent.

I. RESPONDENT IWG

Respecting Respondent IWG, I shall direct it to respond to the information requests of the Union not as yet supplied the Union or submitted into the public record of this matter, if renewed by the Union,[26] and to offer its former unit employees reinstatement in the event IWG resumes employment of unit employees. Respondent IWG will also be directed to make its employees whole for any loss of earnings and benefits they may have suffered in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The duration and measure of the harm employees suffered as a result of their discharge by IWG shall be determined by utilizing the amount of unit work undertaken by the employees of Con-Bru and Arlene as set forth more fully in the discussion, supra. The rate of compensation shall be that of the applicable collective-bargaining agreement. Respondent shall determine all payments it owes to employee benefit funds in the manner set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1970). Respondent IWG shall reimburse its employees in the manner set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), for any expenses resulting from Respondent IWG's failure to make these payments.

Substantial evidence was adduced at the trial respecting the argued supervisory status of particular IWG employees. On the facts of this case there were situations in which some employees may have been supervisory on some jobs or at some times during the life of IWG and not at other times. The issue for applying a general employee make-whole remedy to particular employees is whether or not they would have been employed by Respondent IWG in a nonsupervisory position in the period following their illegal discharges had the unfair labor practices not occurred. That is made somwhat more complicated by the fact that two alter ego corporations followed IWG's cessation of operations. The reduction of the directed remedy to specific individuals and amounts requires consideration of the nature of the work undertaken by Con-Bru and Arlene which was not fully litigated in the instant case and is more appropriately concluded in the compliance stage of these proceedings. I therefore do not make any specific determinations respecting which unit employees of IWG would have received unit employment under Con-Bru and or Arlene had the unfair labor practices not been committed nor the amounts involved. Respondents' assertions that given individuals would not have been employed as employees, but rather as supervisors within the meaning of Section 2(11) of the Act for whom no make whole remedy is appropriate, are preserved for that stage of the preceedings, if necessary.

Further Respondent IWG shall be jointly and severally liable for the unfair labor practices of and remedies directed below of Respondents Con-Bru and Arlene.

In view of the widespread and egregious nature of Respondent's violations of the Act, I shall also include a broad cease-and-desist order. See *Hickmont Foods*, 242 NLRB 1357 (1979).

[26] As noted supra, the record to date may contain sufficient information, given the evolution of the dispute to date, that the Union no longer wishes to pursue this aspect of the case.

II. RESPONDENT CON-BRU

Having found that the unit employees of IWG were wrongfully discharged and that they should properly have been employed by Con-Bru and Arlene under contract terms and conditions of employment, I shall direct Respondent Con-Bru to make the IWG unit employees whole for any and all losses they suffered as a result of Con-Bru's wrongful failure to employ them. I shall also require Con-Bru to offer IWG's unit employees reinstatement in the event Con-Bru resumes employment of unit employees. Respondent Con-Bru will also be directed to make its employees whole for any loss of earnings and benefits they may have suffered in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The identification and quantification of the make-whole employees and their hours will be undertaken consistent with the discussion set forth above under the section of the remedy addressed to Respondent IWG.

I shall further order Respondent Con-Bru give all unit employees written notice that it will recognize and bargain with the Union as specifically identified above as the exclusive representative of employees in each unit. I shall also order Respondent to remove from its records all references to its refusal to employ the IWG unit employees and notify each of them in writing that this has been done and further assure them that the fact of their original nonhire will not be used against them in future.

I shall order Respondent Con-Bru to recognize and, on request, bargain with the Union as the exclusive representative of its unit employees. I shall also order Respondent Con-Bru, on the Unions' request, to restore the status quo ante with respect to the unit, to rescind the unilateral changes it undertook when it did not carry forward the contract terms and conditions of employment, including all terms and conditions of employment different from those in place under IWG's agreement with the Union, in unit employees' wages, hours, and terms and conditions of employment; and to make all affected unit employees whole for losses they incurred by virtue of its unilateral changes in their wages, fringe benefits, and other terms and conditions of employment in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, supra.

Respondent Con-Bru shall determine all payments it owes to employee benefit funds in the manner set forth in *Merryweather Optical Co.*, supra. Respondent Con-Bru shall reimburse its employees in the manner set forth in *Kraft Plumbing & Heating*, supra, for any expenses resulting from Respondent Con-Bru's failure to make these payments.

Further Respondent Con-Bru shall be jointly and severally liable for the unfair labor practices of and remedies directed herein involving Respondents IWG and Arlene.

In view of the widespread and egregious nature of Respondent Con-Bru's violations of the Act, I shall also include a broad cease-and-desist order. See *Hickmont Foods*, supra.

III. RESPONDENT ARLENE

Having found that the unit employees of IWG were wrongfully discharged and that they should properly have been employed by Arlene under contract terms and conditions of employment, I shall direct Respondent Arlene to

make the IWG unit employees whole for any and all losses they suffered as a result of Arlene's wrongful failure to employ them. I shall also require Arlene to offer IWG's unit employees reinstatement in the event Arlene resumes employment of unit employees. Respondent Arlene will also be directed to make these employees whole for any loss of earnings and benefits they may have suffered in accordance with *F. W. Woolworth Co.*, supra, and *New Horizons for the Retarded*, supra. The identification and quantification of the make-whole employees and their hours will be undertaken consistent with the discussion set forth above under the section of the remedy addressed to Respondent IWG.

I shall further order Respondent Arlene give all unit employees written notice that it will recognize and bargain with the Unions as specifically identified above as the exclusive representative of employees in each unit. I shall also order Respondent Arlene to remove from its records all references to its refusal to employ the IWG unit employees and notify each of them in writing that this has been done and further assure them that the fact of their original nonhire will not be used against them in future.

I shall order Respondent Arlene to recognize and, on request, bargain with the Union as the exclusive representative of its unit employees. I shall also order Respondent Arlene, on the Unions' request, to restore the status quo ante with respect to the unit, to rescind the unilateral changes it undertook when it did not carry forward the contract terms and conditions of employment, including all terms and conditions of employment different from those in place under IWG's agreement with the Union, in unit employees' wages, hours, and terms and conditions of employment; and to make all affected unit employees whole for losses they incurred by virtue of its unilateral changes in their wages, fringe benefits, and other terms and conditions of employment in accordance with *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

Respondent Arlene shall determine all payments it owes to employee benefit funds in the manner set forth in *Merryweather Optical Co.*, supra. Respondent Arlene shall reimburse its employees in the manner set forth in *Kraft Plumbing & Heating*, supra, for any expenses resulting from Respondent's failure to make these payments.

Further Respondent Arlene shall be jointly and severally liable for the unfair labor practices of and remedies directed herein involving Respondents IWG and Con-Bru.

In view of the widespread and egregious nature of Respondent Arlene's violations of the Act, I shall also include a broad cease-and-desist order. See *Hickmont Foods*, supra.

IV. RESPONDENT ROBERT B. GORDON

Robert B. Gordon shall be jointly and severally liable for the unfair labor practices of the other Respondents and the remedies they are directed to undertake.

CONCLUSIONS OF LAW

1. Respondent IWG was at relevant times an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Con-Bru was at relevant times an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Respondent Arlene was at relevant times an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. The Union is a labor organization within the meaning of Section 2(5) of the Act.

5. (a) At all relevant times, the Union has been the exclusive representative for purposes of collective bargaining of Respondents' employees in the following unit:

> All journeyman sprinkler fitters and apprentices employed by Respondents, but excluding office clerical employees, and all guards and supervisors as defined in the Act.

(b) The unit described above was at all times material appropriate for purposes of collective bargaining within the meaning of Section 9 of the Act.

6. Respondents IWG, Con-Bru, Arlene and Gordon are:

(a) Single employers.

(b) Alter egos of one another.

(c) Participants in a common enterprise designed to conceal and disguise the continuance of Respondents' obligation to recognize, and bargain with the Union and honor and apply the collective-bargaining contract with respect to unit employees and to avoid their obligations under the Act.

(d) Continuing employing entities of unit employees.

(e) Jointly and severally liable for the unfair labor practices found herein and the remedies directed herein.

7. Respondents Con-Bru and Arlene are successors to, subordinate instruments of and disguised continuances of Respondents IWG and Gordon.

8. Respondent Arlene is a *Golden State* successor to Respondents IWG, Con-Bru, and Gordon which purchased and acquired the business of Gordon, IWG, and Con-Bru, continued to operate the business in unchanged form and remained obligated to recognize and bargain with the Union as representative of unit employees.

9. Respondent IWG violated Section 8(a)(3) and (1) of the Act by discharging its unit employees because the employees were represented by the Union and covered by a collective-bargaining agreement.

10. Respondent IWG violated Section 8(a)(5) and (1) of the Act by failing and refusing to timely or completely respond to the Union's request for relevant information respecting IWG's relationship to other Respondents herein and requests for information respecting unit work and by failing and refusing to continue to recognize and bargain with the Union respecting unit employees following the layoff of those employees by IWG.

11. Respondent Con-Bru violated Section 8(a)(3) and (1) of the Act by failing and refusing to hire the unit employees employed by IWG in order to avoid an obligation to recognize and bargain with the Unions as a successor employer and because the employees were represented by the Union and covered by a collective-bargaining agreement.

12. Respondent Con-Bru violated Section 8(a)(5) and (1) of the Act by engaging in the following acts and conduct:

(a) Failing and refusing to recognize the Union as the exclusive representative of employees in the unit described above for purposes of collective bargaining.

(b) Failing and refusing to meet and bargain with the Union respecting unit employees.

(c) Unilaterally setting initial terms and conditions of employment for unit employees different from those set forth in the collective-bargaining agreement that applied to IWG unit employees without notifying the Union nor affording it an opportunity to bargain respecting such initial terms and conditions.

13. Respondent Arlene violated Section 8(a)(3) and (1) of the Act by failing and refusing to hire the unit employees employed by IWG in order to avoid an obligation to recognize and bargain with the Unions as a successor employer and because the employees were represented by the Union and covered by a collective-bargaining agreement.

14. Respondent Arlene violated Section 8(a)(5) and (1) of the Act by engaging in the following acts and conduct:

(a) Failing and refusing to recognize the Union as the exclusive representative of employees in the unit described above for purposes of collective bargaining.

(b) Failing and refusing to meet and bargain with the Union respecting unit employees.

(c) Unilaterally setting initial terms and conditions of employment for unit employees different from those set forth in the collective-bargaining agreement that applied to IWG unit employees without notifying the Union nor affording it an opportunity to bargain respecting such initial terms and conditions.

15. The above unfair labor practices constitute unfair labor practices effecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]